

CX

A  
TREATISE  
OF  
TROVER  
AND  
CONVERSION.  
WHEREIN

The True Notion of that Action is Stated, with the differences from other Actions of the like Nature. And in what Cases the said Action properly Lies, and in what not, and by and against what person or not. As also what shall be said in Law to amount to a Conversion or not.

T O G E T H E R

With Notes on the Writ and Declaration: When and where the Action is to be Laid, as to the time and place. of certainty in the Declaration, with General Rules in Reference to Latin Words, Anglice's and Phrases: And also Observations on the Ancient Pleadings in this Action, and what Specials Pleas are still in use. Of Tryals in this Action, and what shall be said to be good Evidence of a Conversion on the General Issue, and also of Verdict, Costs, Damages and Judgment.

O W I T H

Several Select Presidents of Declarations and Pleas most in use.

To which is added,

An Abstract of the Law concerning DETINUE.

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L O N D O N, 12°

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TR B A T I  
T R O V E R  
CON V E R S I O N

Rec. Oct. 8, 1879



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THE  
P R E F A C E  
TO THE  
READER.

**I** am not Ignorant, but that a Treatise of this Nature, the Subject whereof is so Common, and thought to be so well understood by every Practiser of the Law, will be thought useless and impertinent: And indeed, were there no more in it than the drawing the Declaration in Common Form, and the General

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Issue on Not guilty pleaded, it might deservedly be liable to that Censure. But if you will but have the Patience to peruse the subsequent Sheets, you will find many Niceties even in this Action, the Non-observance whereof hath been fatal in hundreds of Cases. I shall only instance in one, and that is the *Doncaster Cause*: The Action was a Trespass *Vi & Armis*, brought in the Court of *Doncaster*, and the Plaintiff Declared, That the Defendant took certain Cows of his at *D.* (which was out of the Jurisdiction of the Court) and brought them within the Jurisdiction, and there converted them to his own use. This was Error, and the Judgment was revert. Had he brought Trover (as he might have

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have done ) it had been good and no Error. The Reason of the difference is, in Trespass, the taking of the Cattle is the ground of the Action, and that was out of the Jurisdiction of the Court and so Erroneous; but in Trover it had been good, for there the Conversion is the ground of the Action, and the Conversion was within the Jurisdiction.

We shall find numerous Cases in our late Books about the *Anglicè's* in Declarations, which are here reduc'd to a few Rules. And as for Pleadings, when this Action had supplanted Detinue and began to be frequent, our Judges allowed almost all Special Pleadings that were proper; and therefore we find

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many Arguments about Impignoration, Bailment, Customs, Market Overt and the like; but at length they resolved almost all into the General Issue, Not Guilty, and to give the Special Matter in Evidence, except in some Cases, as Releases, Statute of Limitations, Bars by Recovery in other Actions, and the like, of which last sort I have taken care not to omit any, and have set down several of the former, for the sake of the Ingenious Reader, who will find good Law in the Old Pleadings. But the Cases of Conversion, what will amount to a Conversion, and what will be good Evidence to prove a Conversion, are of standing use in the bringing this Action. And I dare promise my self there  
are

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are few but that in this little Treatise will be pleased with several Notions, which perhaps have not fallen within the compass of their Observation.

Only let me request the Reader not to take up with a single Case, but peruse the whole Chapters; for many Points in this Action (when it came into fashion) were settled but gradually and by degrees, as you may perceive when it was Argued, whether, and in what Cases Conversion is Traversable or not.

I have added the Learning of Detinue in Abstract, that being the Elder Brother, tho' Trover now be in greater Reputation.

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tion. And the References of Prefidents throughout the whole cannot but sometimes be of use to those who ought thoroughly to understand the Nature of this Action.

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**T H E**

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OF THE  
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C H A P.



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T H E

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ST. JOHN'S CHURCH

ST. PETER'S CHURCH

ST. PAUL'S CHURCH

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ST. NICHOLAS CHURCH

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ST. BASIL'S CHURCH

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ST. MARK'S CHURCH

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ST. JOHN THE BAPTIST CHURCH

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ST. JESSE CHURCH

ST. JOSEPH CHURCH

ST. MARY CHURCH

ST. ANNE CHURCH

ST. CATHERINE CHURCH

ST. AGNES CHURCH

ST. BARBARA CHURCH

ST. ELIZABETH CHURCH

ST. MARTIN CHURCH

ST. VINCENT CHURCH

ST. CECILIA CHURCH

ST. AGNES CHURCH

ST. ANNE CHURCH

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O F  
T R O V E R  
A N D  
C O N V E R S I O N .

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C H A P . I .

*The Nature of this Action explained, with  
General Rules and Maxims in our Law  
relating thereunto , together with the  
differences of it from other Actions  
brought for Torts as Trespafs, &c.*

**T**H E Definition or rather Description of *Trover* and *Conversion*, which we usually find in our Books, is in this manner.

This Action lies where the Defendant hath found any of the Plaintiffs Goods, and refuseth to deliver them upon demand ; or where the Defendant comes by the Goods, by the delivery of any other than the  
B Plaintiff,

## Actions and Pleadings

Plaintiff, wherein he shall recover Damage to the value.

I take it, that this Definition is neither full nor clear; for this Action in many Cases lies, tho' the Goods were delivered by the Plaintiff himself, as will appear hereafter, when we come to treat of Bailment, &c.

The Notion of this Action will be better explicated,

1. By Considering the Nature and Reason of Conversion, and how it comes now to be applied to so many several Cases, which were not frequent in our Books. *Detinue* and *Trespass* being then the General Actions to remedy Wrongs of this Nature.
2. By laying down a few general Rules, or Maxims; and
3. By observing the diversities between this and other Actions of the like Nature. As *Detinue*, *Trespass*, *Replevin* and the like.

As to the first.

It is well known, that *Trover* comes from the French word *Trouver*, i. e. *invenire*; and it is the Form in all Declarations in this Action to say, of the Goods *quæ per inventionem devenerunt*, altho' they came to the Defendants Hands otherwise than by finding. And therefore, the losing is but a surmise and not material; and it is but inducement, the *Conversion* being the point of the Action.

There-



## in Trover and Conversion.

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Therefore its said, in *Isaack and Clarks Case*, 2 *Bulst.* 306, 307. *Moo.* 481. 1 *Rolls Rep.* 59. Tho' the Action be brought for a *Trover* and *Conversion*, and no *Trover* in the case (as in *Bailment*) yet if there be a *Conversion*, the Court shall judge upon this; yea, tho' it be upon a lawful delivery. So *Cro. Jac.* 244. Sir *John Ratcliffs Case*, *Noy* 137. 1 *Bulst.* 29. *Yelv.* 178. And in *Kinastons Case*, *Cro. Car.* 89. it is said, The losing is but suggestion and not material; for if the Defendant take the Goods in the Presence of the Plaintiff, or of any other who may give sufficient Evidence; this Action lies against him. When a Man comes to Goods by *Trover* (or finding) there is no Doubt, but by the Law he hath liberty to take Possession of them, but he cannot abuse them, or convert them to his own use, or make profit of them; if he do, he is answerable for it in this Action. But more of this *sub titulo Conversion infra*.

In effect, its the easier way to proceed by *Trover* than *Detinue*; and the Reason which some give, why Actions of *Detinue* are changed into Actions of *Trover* (*viz.*) Because in *Detinue* the Defendant may Wage his Law, but not in *Trover*, is *una*, but not *unica ratio*; for in *Detinue* there is much trouble in the proceedings as to *Garnishment*, *Enterpleader* and the like, which are all laid aside in an Action of *Trover*. It is the *Conversion* that changes the *Detinue* to an Action on the Case, 10 *Rep.* §7. a.

B 2

And

## Actions and Pleadings.

And as to Trespafs, I mean in reference to a Mans Goods being taken away, it is at the Plaintiff's liberty to qualifie the *Tort*, and not to disaffirm his Property; and so it is at his Election to bring Trespafs or Trover, but whether, and in what Cases it is more advisable to bring Trover or Trespafs, will be Obvious to a Students Observation in the perusing the ensuing Cases in this Treatise.

I shall now lay down some few Rules, by which the Nature of this Action may be better understood.

1. *The Plaintiff in this Action ought to have a property in the Goods of which the Action is brought.*

And it must be proved at the Tryal. This is the general instruction in our Books; and yet we must here distinguish, and not swallow things by wholesale; for by the word *Property*, here is not meant an absolute ownership only, but *quasi* a Property; a possessory Property is sufficient to maintain this Action.

If a Man deliver Goods to me to be safe kept till such a time, and then to be redelivered, or to be delivered over, in the mean time, if a Stranger takes them from me or finds them, I shall have this Action against him, 2 *Bulst.* 311. for I have *quasi* a Property, I have more than a bare Possession cloathed with some Right or Trust: A Carrier is accountable for the Goods he receives, and may have Trespafs or Trover at Election.

It is agreed in *Wilbrabam* and *Snows Case*, That in some Cases, tho' the Plaintiff hath not an absolute Property in the Goods; yet as to the Defendants being a wrong doer, he may have a sufficient Property to maintain the Action against him; the Sheriff seizeth Goods by *Fieri fac.* and another takes them out of his Possession, the Sheriff shall maintain an Action of *Trover*; and he comes to the Possession by the Law; and it is but Reason, That he should have as ample remedy to recover Damages for them as a Carrier, that comes to the Possession of the Goods, by the delivery of the party, *Mod. Rep.* 30. 31.

II. To maintain this Action two things must be proved, Property in the Plaintiff, and Conversion in the Defendant.

As to Property *vid. supra.*

As to Conversion *vid. infra.*

III. A Demand of the Goods is necessary to this Action, before it be brought. Especially where the Plaintiff cannot prove a Conversion.

How a Demand and Denial makes a Conversion, *vid. Conversion infra.*

But it is not always necessary that there be a Demand: For if an actual taking of the Goods is given in Evidence, this is good enough, without proving any Demand and Denial. As the taking my Bonnet off my Head, This is an actual Conversion. But when the thing comes by *Trover*, &c. there

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ought to be an actual Demand, *Siderfin p. 264. Bruen and Roe.*

Upon Delivery no Conversion can be without a Demand, 1 *Keb. 164. Rippon and Rutler.*

Trover and Conversion by Baron and Feme, for Goods of the Feme *dum ipsa sola fuit*, the Demand of the Wife is good to found the Action, *Stiles p. 261. Gowers Case.*

If *A.* takes Goods from me, and these afterwards come to the Hands of *B.* by buying or otherwise, and he converteth them to his own use, *B.* shall not be charged to me without a new Demand, and a Detention afterwards, by *Berkly* at Assizes at *York.*

IV. *This Action is not grounded upon any Property supposed to be in the Defendant, but upon the Possession only.*

Therefore Trover and Conversion against Baron and Feme, and that they converted them, &c. it was excepted, That the Wife cannot be said to convert the Goods, because she hath no Property in them, all being in the Husband, and so it shall be said his Conversion only, was over-ruled *Causa qua supra. Yelv.*

But that seems not to be Law.

V. *Conversion is the Point of the Action.*

I have spoke somewhat of this before, when I mentioned the nature of Trover. But for the better illustration of this Maxim, give me leave to Cite a Case in *Stiles p. 313. Keighly and Rhodes.* A

A Writ of Error was brought to Reverse a Judgment in Trespas *Vi & Armis*, at *Doncaster*. The Error assigned was, The Plaintiff declared, That the Defendant took certain Cows of his out of the Jurisdiction of the Court, and brought them within the Jurisdiction, and there converted them to his own use. It was adjudged to be Error, in regard the taking of the Cattle, which is the ground of the Action, was out of the Jurisdiction of the Court: But had it been an Action of *Trover* and *Conversion*, it had been good, for in that the Conversion is the ground of the Action, *quod nota*.

*VI. Trover lies for Goods tho' they are in the Plaintiff's Possession, and that brings Damages for the Conversion.*

Trover was brought for an Horse proved to be of 15 *l.* value. The Jury gave but 3 *l.* Damages on a mistake, thinking the Plaintiff had his Horse again:

By *Wad. Windham*, a new Action of Trover lies for Damages for the Horse, in which the Jury shall prove the 3 *l.* given was only for the Conversion, and not the value of the Horse. And then he observed the Rule laid down, at *Lent Assizes 1660. Norfolk, Tindal and Jolliff, vid. infra.*

It is laid down as a Rule by *Dodderidge*. Possession without Property is a good Cause to maintain an Action in General (*scilicet*) an Action of Trespas. But not Trover. For that in Trespas there are many Pleas, which will serve, as his Freehold, &c. which is not



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so in this Action, 2 *Bulst.* 134, 5. *Holman and Harwithby.*

But how this is to be understood, *respice supra.*

The better to illustrate this Action, *vid. Allens Rep. Alwin and Taylor p. 93.* before Rolls at a *Nisi prius* in *Guild-Hall*. I shall report it because it may be useful, and may often happen.

Trover and Conversion of diverse Quarters of Malt. The Case was, The Defendant having a great quantity of Malt in a Vessel, impowered one *Smith* a Broker to Sell it; and afterwards the Defendant himself sold it to a Stranger, and the same day and before notice of the Sale by the Defendant, *Smith* sold it to the Plaintiff, who demanded it of the Defendant, who denied to deliver it. The Case seemed doubtful, If the Defendants Sale should stand good against the Sale of *Smith*, before notice of the first Sale, then should he be chargable for his Bargain, which he could not perform without any default in him. On the other side it were hard, That the Sale of the Owner, who had the absolute Property in the Goods, should be defeated by a subsequent Sale of him that had but a bare Authority. But the Opinion of *Rolls* was, The Sale of the Defendant should stand good; and the Broker in such case ought to make his Sale conditionally, if the Master hath not sold it before. But he said, that neither the Broker nor his Vendee should be liable to any

any Action for detaining the Goods tho' demanded, without notice given of the Sale by the Master, *Partes concordaverunt.*

*Wherein Trover differs from Trespass*

1. In Trespass, Colour of Possession given by the Defendant to the Plaintiff sufficeth, because this Declaration is general upon a supposal, without any Title put in Certainty. But in Trover, and all other Actions where the Plaintiff makes Title to the thing demanded, there it behoves the Defendant to make a better Title to himself, and to Traverse the Title of the Plaintiff, or else to confess or avoid it, *vid. Relu. p. 165. Draper and Fulk.*

2. Where Cattle are taken tortiously (as for an Harriot where none is due) Trover or Trespass lies at Election. For a Man may affirm or disaffirm his Property. One may qualifie a *Tort*. And for a *Tortious* taking a Mans Property is not divested but at his Election. If Goods are taken by a Trespasser, and if the Party from whom they are taken be attainted of Felony, he shall forfeit them; for the Right and Property remains in him, and the Law shall adjudge them in him, until he makes his Election to the contrary, by bringing a Writ of Trespass, *Cro. Eliz. 824. Bishops Case, Cro. Car. 89. Kynastons Case, Mod. Rep. p. 30. Cro. Jac. 50. Bishop and Jordan versus Vicountess Mountague.*



## Actions and Pleadings

3. Recovery in Trespass for taking away Goods is no bar to an Action of Trover, *Hutt. p. 81. Laicons Case.*

As a Man may have *Detinue* or *Replevin* for Goods taken by a Trespassor, which always affirms Property in him: So he may have a Trover; for one may qualifie a *Tort*, but not increase a *Tort*, *Cro. Eliz. p. 824. Bishop's Case.*

4. An Action of Trover and Conversion lies of an *Hawke* reclaimed, and which may be known by Varvells, Bells or other Marks, whereby notice can be taken of her Owner: But Action of Trespass lies for Killing his *Hawke*, tho' he doth not shew she was reclaimed; because he who hath the Possession may have the Action for Striking or Killing, *Cro. Car. 18, 19. Sir Francis Vincent versus Lesney.*

### *How Trover differs from Detinue.*

In Detinue, the thing it self shall be recovered (if it may be) and in Trover, the value only. Therefore Trover lies for Money out of a Bag, but not Detinue, *Noy Rep. p. 12. Holliday and Higgs.*

Detinue must be brought for personal Goods valuable and certain, *Fitzb 138. Kitch. 176.*

In

## In Trover and Conversion.

II

In Detinue the Defendant may Wage his Law, but not in Trover. *Uncore priſt* is a good Plea in Detinue, not in Trover, 1 Leon. p. 221. *Vandrinck and Archers* Caſe.

Trover by the Wife, and Conversion by the Husband and Wife; the Action of Trover ought to be brought againſt both; but in Detinue upon detainer by the Wife, the Action ought to be brought againſt the Husband only, 1 Leon 312. *Marſhes* Caſe, Yelv. 165. *Noy* 79. *Latch* 126. *Stiles* 48. *Premling verſus Cluſherbook*.

How Trover differs from Bailment, *vid. infra tit. Bailment*.

C H A P.

## C H A P. II.

*For what Things, and where an Action of Trover and Conversion lies, and where not.*

Money.

**T**HIS Action lies for Money out of a Bag, as in *Cro. Car.* 89. *Kinaston and Mores Case.*

Trover of divers Goods *ac inter alia* of 190 *l.* *in pecuniis numeratis*; for tho' in Error after Verdict and Judgment for the Plaintiff it was alledged, That Money lost cannot be known, and so not whether it were the Plaintiffs Money; Yet *per Curiam*, in the *Exchequer Chamber*, it being found by a Jury, that he converted the Plaintiffs Money (for the losing is not material) the Plaintiff had good cause of Action. So *Mich.* 12 *Jac. B. R. Isaack and Clerke, Hill.* 13 *Jac. B. R. Wood and Dr. Sutcliff, 1 Rolls Abr.* p. 5. *Cro. Eliz.* 818. *Dreycots Case.* Therefore the resolution in *Hicks and Holydays Case*, as to this Point is not Law, *Cro. Eliz.* 661, 746.

The Declaration was, That the Defendant had converted 40 *l.* in Moneys, and 800 *s.* and 1600 *s.* The Jury find him Guilty of the 40 *l.* and of the residue not Guilty. It was objected it was not good, for it appears not for which of the Sums it is found, for all is *pro pecunia numerata.* But *per Cur.* it shall be the 40 *l.* mentioned in the Declaration,

claration, for the ſeveral Sums are diſtinguiſhed by ſeveral names, 1 *Rolls Rep.* 293. *Wood and his Wife verſus Sutcliff.*

It lies for an Hundred pounds of Moneys numbred in a Bag. *Sir Tho. Temple and Simms Caſe, Trin. 17 Jac.*

Therefore that in 3 *Leon. p. 38.* is not Law.

But Detinue lies not for Money out of a Bag, for in it the Plaintiff ſhall have Judgment to recover the thing it ſelf, if, &c. and if not, then Damages; therefore the thing ought to be known, *Noy p. 12.*

This Action lies for Money numbred in a Box (as 40 l.) without ſaying the Box was ſealed or locked, as the uſe is in a Replevin, *Hill. 15. Car. 1. B. R. Weſtbury and Wakefeild.*

The Form of a Declaration in Trover for a Bag, and ready Money therein, *vid. infra inter les Presidents.*

The Plaintiff declares in Trover, *qd. cum Poſſeſſionat. fuit de 40 l. in quadam crumena exiſten. ut de bonis ſuis propriis, &c. Cro. Eliz. 568. Rivers and Godskirt.*

By *Rolls.* Trover will lie for Money, which was delivered by the Plaintiff himſelf to the Defendant to keep. Both which Points had been doubted, and reſolved, *Allens Rep. 91. Davies and Dios.*

It

Jewels.

It lies for Jewels delivered in a Box to B. who dies, and they come to C. who broke the Box and converted them, 20 H. 4. p.

13.

*De annulo aureo cum lapide pretioso*, 1 Brownl. 386. 1 Brown. 386.

*Pro poculo argent. Tomp. liber placitand. p. 32.*

*Pro бага & pecuniis numeratis in eadem*, 1 Brown. 387.

*Pro poculo argent. Tomps. 32.*

*Trover pro moneta Flandria ubi duo possessi-  
onat. fuerunt & alter eorum post conversionem &  
ante exhibitionem billæ obiit*, Robinsons Entries  
445.

It lies for Money deposited upon a Wager,  
*vid. infra tit. Pleadings. Cro. Eliz. p. 870.*  
*Ledesham and Lubram.*

Trover for Plate by Attorney *sur* Attach-  
ment *de Privilege*, *Hern. pled. 251. Hill. 2*  
*Jac. Rot. 706.* The Plate being sold and  
converted to the Defendants use.

*Pro pecuniis quæ uxor Defendantis deposuit ad  
Chartas pictas Lusu vocat. Noddy, Vid. Entries*  
*265. vid. le President infra.*

*Pro 20 Ovibus*, 5 Rep. 109. Foxlies  
Case.

*De Equo. vid. Ent. 265. Justific. per Def.  
come Bayliff del Colledge pur Waife en le man-  
nor del Colledge, & quia Liter. patentes non fuer.  
productæ in Cur. est Error.*

*De Bove. Co. Ent. 38, 40.*

No Trover and Conversion lies of an  
Hawk, without alledging it is reclaimed.  
For that is *feræ naturæ*, whereof there is no  
Property, 1 Rolls Abr. p. 5. Sir Martin Lyster  
and

Cattle,  
Sheep.

Horse.

Oxen.  
Of an  
Hawk.

and Home, Cro. Car. 544. *Meſme Caſe.*

*Quære* if it be not good after a Verdict for the Plaintiff, for that the Jury have found he was poſſeſſed of it as of his proper Goods. By Mr. March Rep. p. 12. The words *de bonis ſuis propriis* operate nothing, and by him in that Caſe Judgment was ſtayed. But in *Dyer* 14. *Eliz. Spencers Caſe*, Trover lies not of an Hawk, but when it is reclaimed; and which may be known by Varvels, Bells, &c. *vid. Cro. Car. 18. Sir Francis Vincents Caſe.*

*De accipitre reclamat. cum Tintinabulis, Tomps. 33. Dyer 306. Her. 104, 243.*

For the Tassel of a Goſſebawk reclaimed of the price of, &c. and of two Hawks Bells of the value of, &c. p. 35. *Eliz. Rot. 730. vid. le Declaration.*

*De accipitre reclamat. & duobis Tintinab. Def. Plead. qd. invenit ea in Columbari ſuo, & illa tradidit viceomin. & traverse qd. ſciavit illa pertinere querent. Hern. p. 35. Eliz. Rot. 730.*

Trover and Conberfion lies of a Spannel <sup>Of Span-</sup> Dog. For that is reclaimed, 1 *Rolls Abr. 5. nel-Dog. Pells and Leman.*

Trover lies of Muskats, Monkeys, Parrats, <sup>Of a Muſ-</sup> altho' it is not ſaid that they are reclaimed. <sup>kats, Mon-</sup> They are Merchandife and valuable, Cro. <sup>keys, Par-</sup> *Jac. 262. Grymes and Shark.* <sup>rats.</sup>



*Of Writings.*

Of an Obligation.

Trover and Conversion lies of an Obligation. And tho' the Plaintiff doth not mention the Date of the Bond in the Declaration, or that it was delivered as his Deed, yet its good enough. For he need not shew the Date, because it is lost, and the Defendant hath eloynd it, and he is not to recover the Debt, but the Damages for it, and the misrecital of it is fatal, *Cro. Car. 262. Wilson and Chambers.*

And the alledging that it was *Scriptum Obligatorium*, wherein he was bound, hath intendment sufficient, that it was delivered as his Deed, *Cro. Jac. 637. Upchard and Tatam, p. 14 Car. B. R. Siddons Case.*

The Case of *Watson and Smith Cro. Eliz. 723. is not Law.*

The Form of a Declaration in Trover and Conversion of a Bond, wherein three stood bound to two, one of the Obligees being dead, against an Attorney in *B. R. vid. infra. enter les Presidents.*

For a Deed Baron and Feme shall have this Action of Annuity. for a Deed, by which an Annuity was granted to the Wife, *Trin. 40 Eliz. Russell and Catesbye. Noy p. 70. Mesme Case.* For the Action shall Survive. Otherwise, if the Husband only should recover and after die; his



his Executors would have Execution for the Damages.

In Trover of two Bonds entred into by several persons. And Judgment was in *Plymouth*. It was assigned for Error because he saith not, that they were entred into *infra Jurisdictionem*. Declara-  
tion, Pleas  
dings.

But *per Cur.* The Bonds being *infra*, and the Conversion *infra*, its no matter where they were entred into, 3 *Kebl.* 104. *Lemark and Caule.*

Trover lies of a Trunk with Writings, For a trunk  
with Writ-  
tings. *Rast. Ent. 5. and Stiles 360. Webb and Wash-  
bourn.*

*Trover de billa penali versus Obligor, & averr quod denaria sunt insolut. Trin. 22 Jac. Rot. 668.*

*Per Administrator pro scripto Obligation per Def. cuidam personae vendit. Vide Entries 265.*

*De Obligatione Statuti mercatoris, 8. b. 233.*

*De billa Obligatoria versus eum qui fuit Obligatus in eadem, 1 Brown. 386.*

Trover and Conversion lies for 20 Pecks Corn, Grain  
and Fruits. *de frument, Trin. 12. Jac. B. R. Hills Case.* So for four Bushels of Wheat.

It lies for Corn out of a Bag, *Cro. Car. 89. in Kinaston's Case, Moor.*

*De bladis in garbis seperat. pro decimis, Tel. v. p. 42. Chambers Case, Moore 483. Pigott vers. Heron.*

## Actions and Pleadings

It lies of Forty Measures of Pippins, (*viz.*) Bushells, *Cloyden and Taylor M. 9 Jac. B. R.*

Ship and  
Tackle.

Trover and Conversion brought for a Ship and Tackle, *March. Rep. 110. Siderfin p. 423. Trebemenhers Case.*

The Question was, If the Master of a Ship in a Forein Realm may in Case of inevitable danger, sell the Ship without the Owners consent. And *per Hales* he cannot.

Wood.

*Pro Brasílico ligno capt' in partibus Hispaniæ pro ducent' & quinquagint. doliis ligni Brasílici Anglicè, Two hundred and fifty tun of Brasil Wood, pro Rege Hispaniæ, and laid that he was posselt of them at Westminster in Com. Middlesex, Rob. Entries.*

Timber-  
Trees.

If a Stranger cuts down a Timber Tree in the time of Lessee for years, and carry that or the Bark thereof away, and converts the same to his use, the Lessor during the Term shall have an Action of Trover for it, and before seisure. For the Property of the Timber Tree, when it is cut down is no longer in the Lessee, who hath only a special Property, for Shade and Fruits as long as it is growing; by three Justices against two: Tho' *Crokes* Reason was weighty, the Lessee (saith he) is chargable in a Action of Wast brought by the Lessor, *Allen. Rep. cont. 83. 4 Rep. 62. b. 5 Rep. 76. 11 Rep. 48, 81. Cro Car. 242. Berry and Heard, Mesme Case, Palmers Rep. 327.*

*Per*

*Per Mason*, If the Lessor in such case sue Wast, the Jury in the Damages for Wast shall have Consideration of the Recovery had by him against the Stranger.

If a Stranger Enters my Close and Cuts my Trees, and carries them away, I may have Trover, tho<sup>t</sup>, that after the cutting and before the carrying away I could not claim them, and no actual Possession was in me, *Noy p. 127. Q.*

Tenant for Life, The Remainder for Life, Tenant for Life Cuts down the Timber-Trees; He in the Reversion in Fee, shall have a Trover and Conversion for the Trees, tho' he never seised any parcel of them. For by the cutting of them down, an absolute Property was vested in the Plaintiff, *Allens Rep. 81. Udalls Case.*

*A.* sells One hundred load of Wood of his Trees to *B.* to be taken at the Assignment of the Bargainor, and after *A.* Sells One hundred Loads to *C.* to be taken at his pleasure, *B.* Assigns his Interest to *D.* the Bargainor Assigns, &c. *C.* takes them away, and *D.* recovered in an Action of Trover, *Noy p. 32. Bassett and Baynard.*

Trover and Conversion *de 10 arboribus*, being Timber-Trees Felled, *Stiles p. 235. Popbam and White.*

It lies of One hundred Load of Wood, and Forty of Beeches, *Nov. Lib. Int. 41. b. Sect. 33.*

## Actions and Pleadings.

*De decem carectatis Ligni & 40 Fagis, Co. Ent. p. 41.*

Wooll.

It lies for 50*l.* of Wooll, *ad valentiam* for fifty Todd of Wooll. But *de 3 tribus ponderibus Lana* is not good, *Latch p. 216.*  
1 *Bronwl. Ent. 389.*

*Narratio in B. R. de Lana, 1 Browne 389.*

Garments  
andClothes

Trover and Conversion, for divers sorts of Linnen, adjudged good by *Rolls, Stiles 44. in Vincents Case.*

Trover brought by a Noble Mans House-keeper, and Yeoman of his Wardrobe, for a parcel of Silks lost, for which the Nobleman turned him out of his Service, and the Count. *Modus Intrand. p. 14.*

*Where, and in what Cases Trover and Conversion lies, as to the Gift of the Action and where not.*

A Trover and Conversion lies for Goods found and converted, altho' they come afterwards to the hands of the Party that lost them, by a *Concessum* in *Stiles 261.* *Gowers Case,* and *Pract. Reg. 326.* For the Tort is not purged. But he shall have Damage for it, *vid. infra Lacon and Bernards Case.*

Trover lies of a wrongful Distress, *Stiles p. 12. Whistly and Fawcet.*

*Vid. supra, the Case in Allens Rep.*

An Action of Trover, and an Action on the Case was joyned; for not Guilty answers both. But *Assumpsit* and *Trover* cannot be joyned, 3 *Keb.* 59. *Owens Case*, 3 *Keb.* 264, 335. Quære the Case of *Pember and Ashton*, *Stiles Rep.* 651. *Trover* and *Assumpsit* were joyned, and not Guilty as to one, and Verdict as to the other. And Judgment affirmed, 1 *Keb.* 795, 871. *Mathews and Hopping*.

Two Causes of Action of Trover cannot be joyned in one Action, *Trin.* 23. *Car. B.R. Stiles Pract. Reg.* 326.

*Where and in what Cases Trover lieth not.*

For negligent keeping, no Action of Trover lies. Trover and Conversion of 20 Barrels of Butter, and declared, That by negligent keeping of them, they became of little value, upon which was a Demurrer. *Per Cur.* no Action lies. For a Man who comes to Goods by Trover, is not bound to keep them so safely, as he who comes to them by Bailment. So if a Man findeth my Garments and suffers them to be eaten with Moths. But if he weareth my Garments *aliter*, for that is a Conversion, 1 *Leon* 224. *Walgrave and Ogden's Case*, *aliter* also of misuser, *Cro. Eliz.* 219. *Mesme Case*.

Trover for Malt. The Case was, The Defendant impowred *Smith* to Sell the Malt; and after the Defendant himself Sold it to a Stranger; and the same day, and be-

## Actions and Pleadings

fore notice of the Sale by the Defendant, *Smith* Sold it the Plaintiff, who demanded it of the Defendant, and he denied to deliver it, whereupon this Action was brought. By *Rolls* the Defendants Sale stands good, and the Broker ought to have made a Conditional Sale. (*viz.*) If his Master had not Sold it before. But the Broker nor his Vendees shall not be liable to an Action for detaining the Goods thô demanded, without notice of the Sale by his Master, *Allen Rep. p. 93. Alwyn and Taylor.*

If I deliver Goods to a Common Carrier to carry to a place, and after the Goods are Stollen from the Carrier, this is not any Conversion in the Carrier, so as to charge him in this Action; but a Special Action on the Case lies against him, 1 *Rolls Abr. 6. George and Wiburne*: And yet in 3 *Keb. Sarke and Harts Case*,

By *Twisden*, Its usual to have Trover against the Carrier, if the Goods are Stollen or got away by a Cheat. And the Tryal in that case went on, tho' *Hales* and *Wild* inclined to the contrary Opinion, 3 *Keb. 422.*

Trover for an Herriot, tho' the Defendant have no Title to the Herriot, yet the Plaintiff shall not have a Trover and Conversion for this, if it appear that he himself had not Right to it, *Winch p. 47. in the Bishop of Gloucesters Case.*



A Man lends his Horse to a Special purpose, the Baylee abuseth the Horse, and over-works him, then the lender takes the Horse again; by *Hugh Windham, Lent Assizes, Bucks.* Trover lies not.

If the Kings Purveyor takes Beds, and appoints the Kings Servants to lie in them, this is not any Conversion, *M. 13 Jac. B. per Warburton.*

Certain Trespassors had taken Oats from the Plaintiff, and brought them to the Mill to make into Meal, and the Plaintiff came to the Mill before any thing done, and demanded the Oats as his, and forbad him to proceed to make them into Oatmeal; but the Miller did make it into Oatmeal, by *Berkley at Assizes at York*, this is a Conversion.

No Trover and Conversion lies against a Bardgman, when the Goods are cast over in Storm, *2 Bulst. p. 280. Birds Case.*

No Trover and Conversion lies against an Inkeeper, that detains the Plaintiffs Horse, (left there by a Stranger) till his Meat is paid for, *3 Bulst. 269. Robinsons Case.*

And it is not like to Pasturage of Cattle, *Allen and Chapmans Case, ut supra, Popbam 127.*

## C H A P. III.

*Who shall have this Action of Trover, and who may not, with reference to Declarations and Pleadings under each peculiar Title.*

*Baron and Feme.*

**A**CTIONS which affirm Property, as Replevin, Detinue, &c. may be brought in the name of the Husband only. And Actions which dis-affirm Property, as Trespafs, Trover, &c. ought to be brought in both their names, for Trover of the Goods of the Wife before Coverture, and Conversion after, *Siderfin Hill. 15 and 16. Car. 2. B. R. Powes and Uxor against Marshal.*

It is founded upon a *Tort* before Coverture. But for the Conversion after the Marriage which is the *Tort*, and by *Hide C. J. and Keeling*, an Action well brought in the Barons name only, so in *1 Keb. p. 641.* the same Case.

Baron and Feme joyn in Trover of the Goods lost *dum sola*, and converted since the Marriage: The Court agreed the difference. In Replevin and Detinue, the Husband shall only have it, because these Cases affirm the Property in the Husband. *Aliter* in Trover; and Damages are only to be recovered. Baron and Feme shall have this Action for a Deed, by which an Annuity was granted to

to the Wife, *Trin. 40 Eliz. Russells Case*,  
*Noy. p. 70. Russells Case, vid. supra.*

There is a pretty Case cited in *Hill and Hawkes Case*.

A Woman being posselt of certain Goods lost them, afterwards she took one *Shuttleworth* to Husband, who with his Wife, brought a Trover and Conversion for these Goods; upon this Declaration the Defendant Demurred in Law, the Property which the Wife formerly had, by her taking of *Shuttleworth* to Husband, was now vested in him by the Law, and then he could not joyn his Wife with him in the Action; and because it was adjudged against *Shuttleworth*, the Plaintiff who was a great Lawyer, and who joyned the Wife with him, the which he ought not to have done; And the Declaration being brought unto him (in other Mens Names) for his advise; he himself drew the Demurrer to the Declaration, because he joyned his Wife with him.

Trover and Conversion brought by Baron and Feme, for Goods of the Wife *dum ipsa sola fuit*. By *Rolls* the Demand of the Wife is good to found the Action, *Stiles p. 261. Gowers Case*.

Baron and Feme may not have Action of Trover, and suppose Possession in them both; for the Law transferrs in point of Owner-ship all the interest to the Husband, *21 Ed. 4. 4 Yelv. p. 165. in Drapers Case*.

## Actions and Pleadings

Trover for the Conversion of the Wife *dum sola, &c.* they appear and plead, *non sunt inde culpabiles. Per Cur.* It ought to have been the Wife *ne fuit culpabilis*, and so Issue not good, *Noy p. 41. Cox and Carpenter.*

*Trover port per Baron and Feme, la Feme esseant Executrix, Mod. Int. p. 16.*

### *Trover and Conversion brought by Executors or Administrators.*

An Administrator may bring an Action of Trespass, or Trover and Conversion for Goods of the Intestate, taken by one before Letters of Administration granted to him, (but not against him who justifies under the Ordinary, 18 H. 6. 22. 36 H. 6. 8. *in Reg. 102.B.*) Otherwise, there would be no remedy for this wrong done. And the Letters of Administration do relate to the time of the Death of the Intestate, 3 Keb. p. 206. *Chambers and Pattinson, p. 294. Willington and Dambee, Stiles 341. Longs Case.*

Executor declares, That H. the Testator was posselt, and made the Plaintiff his Executor; and that after the Death of the Testator, the Goods came to the Hands of the Defendant who converted them: Upon not Guilty, it was found for the Plaintiff; It was moved in Arrest of Judgment, that no Possession was alledged in the Plaintiff; and he saith, the Goods came to the Defendants hands, but saith not by Trover.  
But

But *per Cur.* Tho' it is not alledged by the Plaintiff, that he was actually possessed of them, yet upon the matter expressed in the Declaration, the Law said so, because the Property draweth with it the actual Possession of them, *Latch* 214. *Hudsons Case*; and tho' no Trover be alledged, yet its good after a Verdict.

Trover as Executor, and declares of a Trover and Conversion after the death of the Testator. And after Issue the Plaintiff was *Non-suit*, and the Defendant prayed Costs and had them. *Per Cur.* the naming the Plaintiff Executor in this case is surplusage, *Latch.* p. 220. *Worfeild and Worfeild.*

Where the Goods come to the Defendant after the death of the Testator, the naming the Plaintiff Executor is not necessary, 3 *Keb. in Bull and Palmers Case*, 643. *Mod. Rep.* 62. *Turner and Davis.*

Exceptions to a Declaration in Trover by Executor, because he declares, that whereas he was possessed of divers Goods and Chattels, as of his own proper Goods; whereas he should have said, as of the Goods and Chattels of the Testator, at the time of his Death. But the Exception was over-ruled by the Court, 1 *Brownl. Rep.* 16.

Trover by the Plaintiff as Executor, the Defendant by Special Verdict is found to be Administrator *pendente Lite* between the Plaintiff and another pretending to be Executor. The Court conceived, the Defendant as such as had no Title to the Goods.

But

But where the Suit is depending between Administrators, such Administrator *pendente Lite*, may Sue for Goods, 3 Keb. 54. *Smith's Case*.

Trover by Administrator for Moneys lost by the Intestate, and the Form of the Declaration, 2 Sanders p. 137. *Turner and Davis*.

*Trover per Executor' pro bonis quæ venerunt ad manus Defendentis post mortem Testatoris*, Co. Entries 38. *Modus Inrandi*, 15 Hern. 243.

*Per Administrator de bonis amissis & conversis in vita Intestati*, 1 Brownl. 157. 9 Jac. Rot. 3124. Brownl. 643. *Tompf*. 32.

*De bonis & averiis amissis per Intestat' quæ post ejus mortem devener' ad manus Defendentis*, Co. Entries 38.

*De bonis amissis per Intestat. invent' post Administrationem commissam*, Hern. p. 87, 122.

*Per Administrator' pro bonis quæ fuerunt in ejus Possessione post mortem Testatoris*, Co. Entries 38. *Modus Inrandi* 17, 18.

*Bar quod Administratio fuit prius Commissa Defendenti qui cepit, &c.*



**F.** and his Wife Executrix bring Trover and Conversion against **C.** for Goods of the Testators found and converted by the Defendant, and *Verdict pro Quer.* and it was moved to Arrest Judgment.

*First*, That the Declaration was of a Joynt Possession of Goods of the Baron and Feme, and Damages are given to the Baron and Feme; whereas the Goods properly belong to the Wife only as Executrix, and not to the Baron and Feme.

But *per Cur.* the Possession of the Wife as Executrix, was also the Possession of the Husband, and the Damages recovered shall be to the Estate of the Testator, and so may concern them both.

*Secondly*, It doth not set forth how the Feme came to the Possession of the Goods.

But *per Cur.* this being a possessory Action, its not necessary to shew how the Possession of the Goods was gained, *Stiles p. 48. Frembling and Clutterbook.*

*Per Cur.* Executors may have and maintain Trover and Conversion, upon a Trover and Conversion in the Life of the Testator; but the day and place of the Conversion must be allowed, *Mosr. 266. the Countess of Rutlands Case, Owen 156. 3 Cro. 377.*

In Trover by an Administrator, where the Conversion was in the time of the Intestate, the Plaintiff must shew the Letters of Administration. *Contra*, where the Conversion was after his death, *per Hales Norf. Summer Assizes 1660.*

*Trover*

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*Trover*

## Actions and Pleadings

*Trover per Execut. pro bonis & pecuniis amissis ante mortem Testatoris, & averment quod assets non venerunt ad manus ad debita Satisfaciend. & monstre Letters Testament. Defend. Plead quoad part. non culp. quoad residuum, qd. illa fuit uxor Testatoris & quod residuum bonorum & catallor. sunt necessary Furniture pro corpore suo, & idonea pro suo gradu. Averment qd. Executor habet assets ultra. Repl. qd' illa convertit, &c. & Travers. le assets, vid. tit. Pleadings. Count per Execut. Tomps. 131, 331. vid. 264, 265.*

*Pro Execut. de averiis amissis & conversis in vita Testatoris, Her. 122. Tomps. 31. Rob. Entries 452, 447.*

*Pro Execut. de bonis de quibus Testator obiit posses. & quæ post ejus mortem devenerunt ad manus Def. Her. 243. Mod. Intr. 15.*

*De bonis amissis per Intestat. & quæ post ejus mortem devenerunt ad manus Def. Co. Entries 38.*

*Trespass per Baron & Feme Executrix al' Testator in cujus vita bona devener. ad manus Def. Mod. Intr. p. 16.*

*Per Administrat' pro bonis quæ fuerunt in sua Possessione post mortem Intestati, Mod. Intr. p. 17, 18.*

*Trover*

*Trover per Adm' bar qd' Adm' fuit prius commissa Defendenti qui cepit bona & disposuit pro solutione debitorum & funeral' defunctor' Repl. qd' quer' citari fecit Def. in Curia Christianitatis pro adnullatione Literar' Administ. qua fuer' revocat' & commiss' Quer' & Def. vendidit bona pendente Lite, & Traverse qd' disposuit denar' circa solucon' debitorum & funeral' expens. Demurr inde, Co. Ent. 38.*

*Trover per Executor' pro bonis amissis post mortem Testatoris. Def. Plead. qd' illa fuit uxor Testatoris, & qd' le residue des biens & Jewells fuer' paraphernalia qua fuer' necessary pur son Degree per Furniture de son Corps. Repl. qd. Def. convertit bona, &c. & Traverse le Plea in bar. Def. maintain son Plea & Issue superinde, Ra. Ent. 81.*

Trover brought in the name of the King, By the its Good, tho' it be *unde queritur* ; for if the King. King will admit himself out of Possession he may have a Possessory Action, as well as a *Præcipe, Quare Impedit, &c.* 2 Keble 386, the King against Webb.

One who hath a Special Property in the Goods shall have this Action.

If a Common Carrier hath Goods delivered to him to carry to another place, and a Stranger takes them out of his Possession, and converts them to his own use, the Carrier shall have an Action of Trover or Trespass ; for he hath a Special Property in the Goods, and he is to give satisfaction for

One who hath a Special Property.

## Actions and Pleadings

for them to the Owner of the Goods, 1 Roll. Abr. 4, 5. *Goodwin and Richardson*.

By Tenant  
in Com-  
mon.

Trover by one Tenant in Common of the third part of a Ship. *Quare* if it lies, because in this Action the Title must be precise, and he hath not the whole, but a part undivided. Trespass lieth not by one Tenant in Common against another. But in Trespass against a Stranger he shall not abate it, after not Guilty pleaded, 3 Keb. 112. *Lee and Harvey*.

As to the rest of this Case *Quare le Reporter; car jeo ne luy entend pas*. Trover by one Tenant in Common on not Guilty, its void against the other, and must be pleaded in abatement. But in Trover by one Tenant in Common against a Stranger, he may recover his part; *contra* in Detinue which recovers the thing entirely, 3 Keb. 263. in *Blackbourns Case*.

Pleading.

Abatement.

If Debt or Trover be brought for a Moiety, and *Nil debet* pleaded by the Defendant who is a Stranger, this has made the Declaration good. And if such Plea be pleaded by a Stranger, it goes in Abatement; and if it be pleaded by one Tenant in Common against his Companion, this Plea is in Bar, *Siderfin* p. 49. *Cole and Banbery*.

By a Ma-  
ster.

One is a Servant or Factor to his Master, and he sold 20 Quarters of his Masters Corn for 25 l. and received the Money: The Master brings Trover against the Servant. The Action lies not. For if a Man delivers Money to another, the Property



perty thereof is in the Bayliff, because it cannot be known; and Accompt lies in this Case: The Declaration is, that *Casualiter perdidit* the Money, and when he had lost the Possession thereof, he had lost the Property also, because it cannot be known. This was upon a Writ of Error to Reverse a Judgment between *Higgs* and *Holiday*, *Cro. Eliz.* 638, 746. *Noy* 12. *contra*,

But he gives no Reason; but this Case has since been ruled to be no Law, *Vid. supra*.

The Sheriff takes Goods by *Fieri fac*<sup>3</sup> By Sheriff, and *J. S.* takes them from him, he hath such a Possessory Property, that he may maintain Trover as well as Trespass; As a Carrier may: For if he lose the Goods he shall answer for them, *Siderfin* p. 438. *Wilbrabam and Snow*, *Mod. Rep.* 30. *Mesme Case*, and 2 *Sanders* 47. and 2 *Keb.* 588. *Mesme Case*.

But as the Case in *Yelverton* is, The Sheriff seisseth Goods by *Fieri fac* and Returns not the Writ. After the Sheriff is Discharged and a New Sheriff made, the Old Sheriff after his Discharge sells the Goods to the Defendant, and the Plaintiff brings Trover against the Defendant: And Judgment was for the Plaintiff. And this Case differs from *Wilbrabams Case*; For the Sale by the Old Sheriff, after his Discharge is void, and in such case the Old Sheriff after he is Discharged, ought to turn over the Goods

D

to

to the New Sheriff as well as the Prisoners. And by the Seizure of the Goods, the Property of the Owner is not altered ; for the Seizure is not any Execution, only the beginning of it. And in this case the Property is in the Defendant, by Reason of the determining of the Sheriffs Office, and because a New *Fieri fac'* must be taken out, for that a *Venditioni exponas* cannot issue to the New Sheriff. So it was adjudged for the Plaintiff in this Action, That Trover lies, *Yelv. p. 44. Ayer and Aden. 2 Cro. 73. cent. Mod. Rep. 31.*

Against a  
second  
taker.

If *A.* takes Goods, and afterwards *B.* taketh them from *A.* I may have an Action of Trover or Trespass against *A.* or *B.* at my Election, *Siderfin p. 438.*

By Lunatick.

This Action shall be brought in the name of the Lunatick, and not of the Committee, *Noy p. 27. Cox and Dawson.*

By Joynt  
Plaintiffs  
one dies.

This Action is brought by two Plaintiffs for converting their Goods, hanging which Suit, and before Judgment one of the Plaintiffs dies. *Per Cur.* This is no Cause to Arrest the Judgment for the Goods, and the Action for the Goods survives, *2 Buft. 262. Spring and Barrel.*

By Assignee  
of one partner  
a Bankrupt.

Trover well lieth by the Assignee of one Partner, a Bankrupt, against the other, *2 Keb. 750. Thomas and Day.*

C H A P. IV.

*Against whom an Action of Trover and Conversion lies or not, and the manner of Declaring and Pleading.*

*Against Baron and Feme,*

**I**F Goods come to a Feme Covert by Trover, This Action shall be brought against Baron and Feme, and not against the Husband only; for that it sounds in Trespass, and is a Tort, with which the Wife may well be charged. *Aliter in Detinue*, for upon a Detainer by the Wife, the Action lies against the Husband only, *1 Leon. p. 312. Marshes Case.*

But the Declaration in such Case ought to suppose, that they converted them to the use of the Husband only. For the Wife may be a Trespasser, and may convert to the use of her Husband, or for an Estranger, but she may not convert them to her own use being a Feme Covert.

Therefore in Trover and Conversion of Goods against Baron and Feme, supposing that they converted them to their own use; after Verdict and Judgment for the Plaintiff, The Judgment was reversed. For it is than a Conversion to the use of the Husband. A Feme Covert with her Husband cannot convert to the use of the Wife; wherefore the Declaration was not

good, and Judgment reversed, *Cro. Jac.* 661. *Berry and Nevil*, *Jones* 16. *Cro. Car.* 494. *Perry and Diggs*, 1 *Rolls Abr.* 6. *Granger and Meadern*, 1 *Rolls* 6.348. *Reames and Humfrys. Latch*, p.162. *Newmans Case*.

Tho' the Husband and Wife may be charged with a Joynt Battery or Imprisonment, yet it cannot be so for Goods converted. Therefore *Draper and Fulks Case*, in *Relv.* 165. is not Law.

*Quod nota*, and *March*. p.82. is not Law.

Trover and Conversion against G. and his Wife and a Stranger, and a Verdict and Judgment against them. Error was brought, and it was assigned for Error, that the Plaintiff declares, That the Goods for which the Action is brought *venerunt ad usum ipsorum* (*viz.*) of the Husband and his Wife, and of the Estranger, which cannot be, for they cannot be said to come to the use of the Feme Convert. And Judgment was reversed, *Stiles Rep.* 115. *Gallop versus Sympson*.

If it be laid as a Conversion, *ad usum suum proprium*, its all one as if it had been *ad usum ipsorum*, and so is not good, *Stiles p.* 18. *Clerk and Pew*, 3 *Keb.* 100, 104. *Turner and Taylor*.

*Ad Damnum suum proprium* is ill, 2 *Keb.* 520. *Brown and Staines*. And yet in *Hodges and Sampsons Case*, *Jones* 443. 15 *Car.* its ruled to be good.

But now the Law is settled prout *supra*.

The

The Trover and Conversion of the Wife is the Trover and Conversion of the Husband, *Siderfin* 113.

And so the Writ ought to suppose, otherwise it shall abate; for the Wife may not convert to her own use, *Siderfin* p. 113.

Action of Trover against the Husband only is good, tho' the Wife made the Conversion, *Owen* p. 48. or the Writ may be good against them both.

Trover and Conversion against Baron and Feme, Baron and Feme are Outlawed, and the Feme appears by Attorney and prays a *Superfedeas*; she shall save her Imprisonment, *Litt. Rep.* 18. *Smith and Ash*:



Action of Trover and Conversion against Baron and Feme, supposing the Trover by both during the Coverture, and the Conversion by the Wife only, The Defendants plead *quod ipsi non sunt inde Culpabiles*, that is not good. Judgment  
against  
Baron and  
Feme.

For the Declaration doth not charge the Baron with any Tort, but only the Feme, the Issue ought to have been *quod ipsa non est inde Culpabilis*, *Cro. Eliz.* 883. *Cox versus Crapnel & ux.* *Noy* p. 79. *Newman and Cheyney*, *Cro. Jac.* p. 5. *Mesme Case*, and *Latch.* 126. and a Repleader was awarded.

Trover against Baron and Feme. The Goods are said to be in the Possession of the Wife, and a request made, and the Baron and Feme refused to deliver them; and afterwards, that the Wife did convert them to her use. And the Judgment in *Norwich* was, That the Wife alone

should be in *Misericordia*, its Error.

They ought as this Case is to be both in *Misericordia*. 3 *Bulst.* 156. *Wood and Dr. Sutcliff*.

Trover and Conversion was brought against Baron and Feme by an Executor. And declares, That the Testator lost, &c. and that they came to the hands of the Wife *dum sola fuit*, and that the Testator after died, and that the Feme *dum sola fuit*, converted them to her own use. 5 *Rep.* 27. *Russels Case*.

And a Release was pleaded: Therefore *James and Asbes Case* cited in *Berry's Case*, *Palmer's Rep.* 342. that Trover and Conversion doth not lie against the Baron and Feme, for Trover of the Wife during the Coverture, seems not to be Law.

Wherein  
Trover lies  
against the  
Husband,  
for the  
Wife tak-  
ing up of  
Goods or  
not.

If one sell Goods to the Wife on Trust, and delivers them to her, yet no Action of Trover or Assumpsit lies against the Husband for this, *Siderfin p.* 129. in *Manby and Scots Case*, *Mod. Rep. Mesme Case*, if a Feme Covert take Wares of a Shopkeeper against his will, upon pretence of buying them, an Action lies against the Husband. For 'tis a Conversion by wrong: *vid. infr' Renis and Humfrys Case, M. Rep.* 137.

Wife Bail.

But upon Sale to the Wife of Goods, if the Vendor doth not know her to be a Feme Covert, Trover lies against the Husband. *Siderfin p.* 129. *Manby and Scot, More* 841 2 *Bulst.* 306. 1 *Rolls Rep.* 59. *Mesme Case*.

Action of Trover against Husband and Wife, and the Wife is arrested, she shall be Discharged on Common Bail, *Mod. Rep.* 8.

Trover



Trover lies for an Estray without actual Seizure. Agreed in 2 Keb. 589. in *Wilbraham and Snows Case*.

If an Estray be claimed within the year and day, &c. and the Lord refuseth to deliver it; Trover lies, tho' the Meat be not paid for; and the Lord cannot detain for the same, but must bring his Action, *per Moreton Justice, Lent Assizes Norf. 1667.*

*Quære: For Windam contra. vid. Co. Ent. 178. Harriot.* Issue was joyned upon tender of amends for the keeping, and Verdict *pro Quer.*

The Defendants Bailiff seized Beasts as an Harriot, whereas there was not any due; whereto the Defendant agreed and converted them.

Trover lies in this Case as well as Trespas, *Cro. Jac. 50. Bishop and Jordan versus Vicountess Mountague, 3 Cro. 824.*

Goods are bargained and sold on Condition of payment of so much, such a day, to be void. The Money is paid, The detaining is a Tort, and Detinue or Trover lies, *Cro. Eliz. 867.*

Trover and Conversion lies upon a Wager. As Trover of ten Angels and converting them. Defendant pleads a Wager between the Plaintiff and C. concerning, &c. and the Plaintiff and C. each of them delivered into his hand ten Angels, and agreed if so, &c. then they were to be delivered to C. &c. and alledgeth the Trying the thing in dispute, and so delivered them to C. which is the same

## Actions and Pleadings

Conversion. This is but Evidence ; and when he delivered it according to the intent of the Bargain, its not any Conversion, *Cro. Eliz.* 870. *Ledesham and Lubram.*

By Creditors or Assignee against Bankrupt. Trover lies by the Creditors of Assignee, for the Goods of a Bankrupt *2 Rep.* 25.

If Goods of the Bankrupt come to the hands of *A.* and be sold to *B.* no Trover lieth for the Money and the Goods. The Commissioners have only power of the Money. But on Sale to *A.* by the Bankrupt, the Commissioners may Elect to have Money or Goods, *1 Keb.* 348. *Bents and Mew* And so the Assignee, *3 Keb.* 294. *Willingtons Case.*

Game.

Wife plaies at Cards and loseth 40 *l.* of the Husbands Money, the Husband shall recover this Money again against the Gamster in an Action of Trover, *Trin.* 6. *Fac. Rot.* 1717. *Ricen Key and Thomas Stephens Case*, cited in *Scott and Manbies Case*, *Siderfin* 122. *Vid. President del Declaration infra.*

Upon depasturage tho' the Money for Pasturage be not paid.

Trover of five Kine ; The Case was, *B.* was possessed of the Kine, and put them to Pasturage with the Defendant, and agreed to pay him 12 *d.* per Cow per Week, so long as they remained with him at Pasture. And after *B.* sold them to the Defendant, who refused to deliver them to the Plaintiff, unless he would pay the Pasturage, &c. afterward *F.* by the appointment

pointment of *B.* paid him the Money for Pasturage, and he delivered the Kine to *F.* Action lies. For his denial, and after a delivery to *F.* was a Conversion. And the Defendant may not detain the Cattle against him who bought them till the Money paid, but must bring his Action against him who put them to Pasture, *Cro. Car. 271. Chapman and Allen.*

Trover and Conversion lies of ten Ne- For Ne- groes and an half, they are usually bought groes. and sold in *India.*

*Per Cur.* This is a sufficient Property and Conversion, they are by usage *tanquam bona*, and go to the Administrator till they become Christians, and thereby they are Infranchised. And it lies of a Moiety or third part against any Stran- Of a ger; albeit not against the other Co- Moiety or partners, 3 *Keb. 785. Butts and Penny.* third part.

*Fieri Fac'* against *J. S.* who hath Goods Trover a- of *A.* On Sale of these Goods, Trover against Bay- or Trespas will lie against the Sheriff. liff's, &c. And to prevent this, all the Sheriffs of or not. *England* take Security, 1 *Keb. 693. per Twisden in Sanders Case.*

No Trover lies against the Bayliff on the due Execution of his Writ, *vid. 3 Keb. 932, 3.*

In Trover on Special Verdict the Case was, The Plaintiff on a *Fieri fac'* seised Goods in his Hands to the value of the Debt, and payed part of the Debt; and the Goods not being sold, nor the Writ returned, the Sheriff was Discharged of his

## Actions and Pleadings

his Office. *Per Cur.* He may sell the residue without a *Venditioni exponas*, Cro. Jac. 23. *Ayres and Aden.*

On seizure  
by a Custom-  
er on 3  
H. 7.

Seizure by a Customer for Goods on 3 *H. 7. c. 7.* on suspicion of Non-payment is sufficient to charge him in Trover and Conversion, 1 *Keb.* 894. *Brewen and Rowe.*

The Plaintiff a Grocer held a Shop of Grocery, and declared *quod ille reposuit fiduciam in Defendente*, to sell the Grocery Wares of the Plaintiff in the said Shop. And it was further found by Special Verdict, That the Defendant being in the said Shop *cepit & asportavit* the said Wares and did convert them. An Action of Trover lies. The Defendant had no Interest, Possession, or other thing in them, but only to utter them by Sale according to Commission, 1 *Leon p.* 87. *Cafe* 110. *Glosse and Hayman. Owen* 52 *Mo.* 248. *Cro. Eliz.* 784. *Countess of Salop cont. Crompton.*

**Trover**

*Trover and Conversion against Executors.*

It lies against Executors. The difference is this, where the *Tort* lies *ex maleficio*, there it dieth with the person, but where it is *ex contractu*, *aliter*. If I deliver Goods to a Man and he dieth, Trover lies against his Executor, *March Rep. p. 14.*

Where the Contract *oritur ex delicto*, as for not setting out of Tithes, Action lies not against the Executor of a Parishioner. Nor doth Trover lie against Executor for Conversion by the Testator, by Statute. But *contra*, where it ariseth *ex quasi contractu*, 1 *Keb. 344 Hole versus Bradford.*

An Action of Trover, for detaining of Money due for a Cow sold by the Testator, to whom it was delivered to redeliver upon demand, lies not against an Executor; being but in nature of a Treipass, 1 *Keb. 273. Bayly and Bertley.*

*Against one Outlawed.*

It is the Course of the *Exchequer* in case of an Outlawry, to prefer an Information in Nature of a Trover and Conversion, against him that hath the Goods of the Party Outlawed.

*Trover*

*Trover and Conversion against an Infant.*

If one deliver Goods to an Infant by contract, &c. knowing him to be an Infant, the Infant shall not be charged in Trover and Conversion for them. *Aliter*, if the Delivery of the Goods be to an Infant, not knowing him to be an Infant, *Siderfin* p. 129. in *Manby and Scots Case. Q.*

An Infant is chargable for a *Tort*, and therefore Trover lies against him. And he cannot plead *Deins age*.

But in Trover and an Action on the Case brought against an Infant (as there may, But not Trover and Assumpsit) and he pleads he was an Infant at the time of the Conversion; this Plea prevents a Discontinuance, but is not good as to the Trover, and therefore Judgment *pro Querente*, as to the Action on the Case, 3 *Keb. 59. Owen and Lewis.*

*Trover*



*Trover and Conversion against a Baylee.  
And how the Law is in reference to de-  
livery, Bailment and Pleadings.*

It was long questioned in our Books,  
whether Trover lay upon Bailment or  
Delivery, till *Jac. Moor Rep. 841.*  
*Isaack and Clarks Case.*

And then it was settled, that it did;  
because the circumstances of things de-  
livered are altered; as when *H. denieth*  
the Goods, he takes them as his own,  
which the deliverer was ignorant of,  
and intended not. By *Bridgman* in the  
Argument of *Scot and Mandby's Case*, 1  
*Keb. 449.*

Upon delivery, no Conversion can be  
without a demand, 1 *Keb. 164.* *Rippon and*  
*Rutler.*

Now it is not properly a Conversion,  
but an Evidence of Conversion. And so  
is 1 *Rolls Abr. 5.* In *Isaack and Clerk's*  
*Case.*

If I Bail Goods or Moneys to another,  
and he denies to give them me upon de-  
mand; this is not any Conversion, but  
only an Evidence of a Conversion, in as  
much as he comes to them by my own  
Bailment.

Trover lieth on bare demand and de-  
nial against the Baylee, *vid. 3 Keb. 282.*  
*Sykes and Wall's Case.*

Baylee

Misuser.

Baylee of an Horse Kills him: A General Action of Trespass or Trover lies against him, *Co. Litt.* 57. *a.* For the Baylee hath a bare use of them, and when he takes upon himself as Owner to Kill them, he loseth the benefit of the use of them. Or he may have an Action of Trespass on the Case for that Conversion, 5 *Rept.* 13. *b.*

*Aliter*, If there be confidence reposed in the person, and there is negligence, Action on the Case then lies only, 5 *Rep.* 13. *E. of Salop's Case.*

Privy of  
Bailment.

So long as privy of Bailment remains, no Action on the Case lies against the Baylee. But when the privy of Bailment is determined by the Tortious Act of the Baylee, Special Action of the Case lies, but not of Trespass. One delivers an Horse to Ride to *A.* and he Rides further to *B.* no Trespass lies, 1 *Rolls Rep.* 128. *Q.*

Baylee, or he which hath a Special Property, shall have a General Action of Trespass against a Stranger, and recover all in Damages, for that he is chargable over, *Co.* 13. *Rep.* 69. 14 *H.* 4, 28, *b.* 25 *H.* 7. 14. *b.*

Our former Books make a difference between Bailment and Trover. For in case of Trover the Party is not chargable, but in respect of the Possession, which being removed, the Action is gone against the Finder; as if he lose them, or they be taken from him. A Man which comes

to Goods by Trover, is not bound to keep them so safely as he that comes to them by Bailment, 1 Leon. p. 224. *Walgrave against Ogden*, 2 Bulst. 312.

If a Man Bail Goods to one to Bail over to another, if the Baylee contrary to his Trust doth not deliver them over, but converts them to his own use, he is by this act liable to the Action of the Bayllor, and also of the Party to whom they were to be bailed over. And Trover lies by either of them against him; tho' the third person never had the Possession of them, yet this Conversion and Non-fesance is a *Tort*. The Case was, *A. B. C.* *A.* owes *C.* an 100*l.* and *B.* was indebted to *A.* in 100*l.* it was agreed between *A. B.* and *C.* that *B.* in discharge of his Debt to *A.* should discharge the Debt of *A.* unto *C.* by delivering to him certains Wares which he then had in his Hands and Possession, being the Goods and Wares of *A.* and which *B.* by and with the consent of *A.* did assume and promise to deliver to *C.* in discharge of the Debt of *A.* to him, and *C.* was content to accept thereof. But *B.* did not discharge the Debt of *A.* to *C.* by delivery of the Goods, but did convert them to his own use after the death of *A.* Upon this *C.* brought Trover and Conversion against *B.* And *per Cur.* The Action well lies, but both shall not have the Action. This not delivery of these Goods by *B.* the first Baylee unto *C.*  
doth

doth amount in Law to a Conversion,  
1 *Bulst.* p. 68. *Fluellin and Rave.*

Of Pawns.

Sir *John Ratcliff* pawned an Hatband set with Jewels to *D.* for 20 *l.* and no day certain was set down to redeem the same; afterwards *W.* being Sick delivers this Hatband to *D.* and bid him keep the same till the 20 *l.* was paid, and then to deliver it to the Owner, *W.* makes his Wife Executrix and dies. Sir *John* tenders the 20 *l.* to the Executrix, &c. and she refuseth it, after which he demands his Hatband of *D.* who refused to deliver it. Sir *John* brings Trover against *D.* Action lies.

And it was resolved *per Cur.*

1. If a Man pawn Goods, and no time is appointed for the Redemption, he hath Liberty during his Life to tender and redeem them, and the Death of the Party to whom they were pawned shall not hinder the Redemption; for it is a Condition only knit by him, and to be performed by him.

But otherwise it is, if the Party who pawned the Goods die before Redemption, his Executor cannot redeem, for it is a Condition personal; and being generally pawned doth not extend but to the person of him that pawned it.

2. Tho?

2. Tho' the Defendant had the delivery of the Hatband by *W.* yet the tender of the 20 *l.* ought to be made to the Executrix, and not to the Defendant; for *Davis* had no interest by the delivery, but a naked Custody. And if the Delivery had been upon a Consideration, yet this doth not alter the Case, for the Defendant is not Privy to the first Contract of the Pawning, nor to the Condition. And so it is not like to a Mortgage, for there he which had an Interest ought to have the Moneys: But in the case of a Pledge, there is not but a Special Property in him who takes it, and the general Property continues in the first Owner. And in this case, the demand of *Davis* is good. And it was held, that instantly upon the tender of the 20 *l.* and refusal, the Property was intirely reduced to the Plaintiff without claim, *Yel. p. 178. 1 Bulst. 29. Sir John Ratcliffs Case.*

*A.* takes Goods Tortiously to the use of *B.* and *B.* agrees to it, Trover lies against *B.* as well as Trespass. As if the Lords Bayliff seile the Harriot Tortiously, and afterwards the Lord agrees to it; Trover lies against the Lord, *Cro. Eliz. 824. Bishop versus Vicountess Mountague.*

Against him that  
that is pos-  
fest of the  
Goods by  
Sale, Gift  
or Finding.

The Plaintiff may chuse to have his Action against the first finder, or against any other which gets the Goods after by Sale, Gift or Trover. Therefore, where in Trover the Defendant pleaded, that before the Trover supposed *A.* was pos-  
fest of the said Goods, as of his pro-  
per Goods, and sold them to the Defen-  
dant, and that he had not any notice  
that the said Goods were the Goods of  
the Plaintiff. This Plea is not good,  
*1 Leon 189. Galliard and Archer, 1 Brownl.  
Rep. 5.*



C H A P. V.

*What shall be said to be a Conversion, or what in Law will amount to a Conversion, so as to ground this Action; and good Evidence to prove a Conversion.*

**R** Equest and Denial is *prima facie* good Evidence to prove a Conversion to a Jury, but no good Evidence in point of Law: For if it be found by Special Verdict that the Plaintiff requested the Goods of the Defendant, and he refused, this is no matter upon which the Court can judge any Conversion; for the Conversion ought to alter the Nature of Detinue to an Action of Trespass on the Case, which a Denial cannot do in Law; for in the Count in Detinue, request and refusal is alledged; yet its good Evidence, and so it hath been always allowed to prove a Conversion, that the Plaintiff demanded the Goods, and the Defendant refused to deliver them. This shall be good Evidence to a Jury *prima facie*, that he hath converted the same, until some other particular matter appear, by which it is no Conversion, as in *Thimblethorps Case*.

Lessee at the end of his Term leaves a Timber-log on the ground, and he after demands it; a denial of this without some other act done shall not amount to a Conversion, for it lay there still. But if it cannot appear, that he hath made any Conversion, but only a denier; this is good Evidence to a Jury, and good direction to the Court (if other matter do not appear to the contrary,) that this is a Conversion, by *Dodderige*, 2 *Bulst.* 310, 314. *Isaack and Clark*. And by *Hobart in Agars Case* p. 187. Denier of Goods from an owner, after request, is allowed sufficient Evidence to maintain a Conversion, tho' legally it is not a Conversion. Yet in such case its reasonable to allow it Evidence to prove a Conversion. Because, if you have Goods of mine lawfully by Finding or Bailment; yet when I require them of you, you can no longer lawfully hold them; and therefore when you still derain them from me, it argues, that you claim them as your own, and so use them, *Siderfin* p. 127. *Cro. Eliz.* 495. *Eason and Newsam*. So per *Rolls*, *Stile* p. 361. *Webbs Case*.

This Action is an Action on the Case; and it is not necessary to shew a Conversion, any more than a denial and refusal, and that is the common use. And therefore *Haughtons* Opinion in 2 *Bulst.* 308 is not Law. Neither need there be a pertinacy or contumacy in the denier, as was said in *Bulst.* 2. 311.

To

To prove the Conversion it was offered, that the Plaintiff did demand satisfaction for the Corn: Its good Evidence, the demand being to the Party himself who took the Corn, *Rokebies Case*, at *York Affizes* before *Green Serjeant*.

If in Trover and Conversion, an actual taking of the Goods is given in Evidence, this is good enough without proving a Demand and a Denial. As the taking my Bonnet off my Head is an actual Conversion, but where the thing comes by Trover, there ought to be an actual Demand, *Siderfin* p. 264. *Trim.* 17. *Car.* 2. *B. R. Bruin and Roe*.

In Trover it is usual to prove no more, but that you requested the Goods, and the Defendant refused to deliver them, this is a Conversion, *Brownl. Rep.* 17.

If one take my Horse and Ride him, Redelivery and after redelivers him to me; yet I may have this Action against him, for this is a Conversion, and the redelivery is not any Bar of the Action, but only a mitigation of Damages, 1 *Rolls Abr.* 5. *Countess of Rutlands Case*. no purgation of the Conversion.

The taking of a lawful Distress for Rent or Toll is not any Conversion. Therefore in such Cases plead not Guilty; *aliter*, if the Distress be not lawfully taken, that is a Conversion, *Yelv.* p. 9, 10. *Salters Case*, *vid. plus de ceo infra tit. Pleadings*. Distress.

## Actions and Pleadings

So *Hobart* in *Agars Case*. If a Man doth a thing allowable by the Law, as to Distrain and Impound; this is no Conversion, 1 *Brownl. Rept.* 5. *Mesme Case*.

One takes my Goods and saith they are his. Trover and Conversion lies.

Negligent keeping of what a Man comes to by Trover is no Conversion, 1 *Leon.* 224. *Walgrave's Case*.

As if a Man find my Garments, and suffers them to be Motheaten; *aliter*, if he wear them, for that is a Conversion.

Upon Pasturage of Cattle, Denial and Detainer for Pasturage Money due to the Vendee, is a Conversion; for he must have his Action for the Money. And is not like to the Case of an Innkeeper or Taylor, who detain an Horse or Garment till satisfaction, *Cro. Car.* 271. *Chapman and Allen*.

A Distress had been taken for Damage Fesant, and the Damages demanded were tendred, being an involuntary Trespass. A detainer after the tender shall not make one guilty of Trover and Conversion, coming lawfully to the Goods at first, *per Vernon at York Assizes*, *Hutton* p. 10.

Conversion must be by Sale is made to a Man upon Credit, Vendee promiseth to pay for the Goods at *Michaelmas*, and doth not. Trover in this Case doth not lie.

Con-

Conversion must be a Conversion by Tort; and not where they agree upon a price and a day. But in *Cro. Eliz.* 254. *Remis and Humfry's Case*, Where a Man comes to buy Goods and offers 10 l. for them, and the Owner agrees to accept the Money, whereupon the Buyer takes the Goods away without Payment or Delivery by the Owner; there an Action of Trespass or Trover lies, notwithstanding the Bargain, 21 H. 7. 6. *Mod. Rep.* 137. in *Scot and Manby's Case*.

Of Conversion supposed to be a second time, vide *Cro. Car.* 334. *Swaine's Case*.

Trover on Bailment, and the Defendant Converts, and after redelivers to the Plaintiff; yet this is a Conversion, and the Action lies, 1 *Rolls Abr.* 5. L. 1. *Countess of Salops Case*.

## C H A P. VI.

*Of the Writ and Declaration.*

**T**He Writ is General.

The *ac etiam* is, *pro Conversione & dispositione bonorum & Catallorum ipsius Quer' ad valentiam* 100 l. 1 *Keb.* 598.

Where the Writ is brought for one thing only, there mention is made in the Writ of the nature of it; but when the demand is of divers things, for the brevity of the Writ it is *de quibusdam bonis & Catallis*, and to express the certainty of them in the Declaration, *Cro. Jac. p. 307. Amias Clyson and Proct.*

The Death of one shall not abate the Writ in Trespass on the Case, *Hern. Plead.* 102.

Yet in *Keb. 3. 127.* by the Death of one of the Plaintiffs the Writ is abated.

In this Action you may Arrest the Party upon a Common *Clausum fregit*, and Declare in Trover, or Sue him to Outlawry: Joynt Plaintiffs bring this Action, and hanging the Suit, before Judgment one dies, this is no Cause to Arrest Judgment, 2 *Bulst.* 262. *Springs Case.*

Tho' no place of Conversion be shewn in the Writ, yet its good enough, *Cro. Car. 525. Whites Case.*



Of Declarations.

I fhall beg the Readers Patience, if I am a little tedious under this Title ; I know, a Fault in a Declaration is like an Error in the firft Concoction, hardly to be rectified. I fhall confider of it firft in general, and then give pertinent Cafes, as to the time and place of laying it. And after that I fhall difcover wherein a Declaration in this Action is uncertain, as to Expreffions, Words, Periphrases, Anglices and the like, things which feem little, yet are of importance as may be underftood by the multitude of late Cafes, and the different Opinions of the Courts ; but by fome Rules I laid down, your Judgment in fuch Niceties may be better and more furely informed.

If it be a dead thing, the Declaration muft be faid *ad valentiam* ; if of a live thing, it muft be faid *pretii*, for to every thing in the Declaration there ought to be a value or price added.

To every thing the *ad valentiam* need not be added ; and its aided after the Stat. of 18 *Eliz.* after a Verdict. But fome are of Opinion its matter of Substance, *vid.* Stat. Car. 2. Cro. Jac. 129. Wood and Smith. And fome are of another Opinion, Cro. Jac. 645. Bradford and Ramsy.

A Man may Count either upon a *devenerunt ad Manus* generally, or specially *per inventionem*, but the later is better, and more certain, *per Co. 2 Bulst. 313.*

He declares of the delivery of Goods to keep, and saith not he lost them, yet its Good. For the Conversion takes away the Property from him, *Gro. Eliz. 781. Grumbleton and Grafton.*

The Writ is General, and Demands nothing in certain; it is *de quibusdam bonis. Si A. fecerit te securum, &c. de quibusdam bonis & Catallis.* This is good and certain enough, without particularizing them in the Writ; it is made certain by the Declaration, *1 Bulst. 126, 127. Procter and Clifton.*

The Declaration on the Imparlance Roll is the Original and Warrant of the Issue Roll.

As the Writ is general and demands nothing in certain, the Declaration on the Imparlance Roll is the Original, and Warrant of the second Declaration. In the Imparlance Roll he declares of a Feather-bed, and afterwards he declares of a Feather-bed and a Flock-bed, and entire Damages are given; the Plaintiff shall not have Judgment. The addition of the Flock-bed and Damages entirely given is ill, *Noy p. 139. Andrews and Larkin.*

In Trover after Verdict, it was moved in Arrest of Judgment, that the Imparlance Roll was entered, with spaces for the Possession and Conversion, but both those spaces in the Issue were filled up and held good, *1 Brownl. Rep. p. 9. Parker versus*

*versus Parker.* Tho' the Impar lance Roll cannot be amended by the Issue Roll, because it is the Original.

But the Declaration here was good in matter and substance, *Hobart p. 76. Mesme Case.*

Trover by *ac etiam billæ* of 100 l. the Plaintiff encreast his Declaration to 600 l. to charge the Bail.

*Per Cur.* The best cause must be expressed in the Writ, and he must declare *de novo*, 2 *Keb.* 743. *Tompson and Curtis.*

Trover of a Sword, whereof the Plaintiff was possessed *ut de bonis suis propriis*, and that the Defendant *cepit eadem bona.*

*Per Cur.* Its good enough. Tho' in Action upon the Case on Forgery of false Deeds, and Counts but of one Deed, its ill, 2 *Keb.* p. 188. *Bird and Watson.*

In Trover and Conversion, the Conversion is Traversable; therefore the time and place of a Conversion must be set down in Pleadings.

When

*When and where the Action of Trover and Conversion is to be laid, as to Time and Place.*

The Plaintiff shews he was possessed of the Goods 1 *die Martij*, Anno 21 *Jac.* and *postea* 2 *Martij*, Anno *supradicto* the Defendant converted them. And the Action commenc'd *Termino Pasch.* and upon General Issue found *pro Quer.* it was moved in Arrest of Judgment, That here was a Contradiction, the Conversion is laid to be before the Trover. But the Plaintiff had Judgment, for the 1 *die Maij* is idle, and it shall be sufficient to say *postea Anno supradicto*, 2 *Rolls Repr.* 475. *Lea and Nash.*

One declares in Trover for Goods, and that *postea* (*videlicet*) such a day which was before the losing, &c. yet adjudged good. For the (*videlicet*) is idle. Cited in *Sir Nich. Hall's Case*, *Cro. Jac.* p. 549.

In this Action observe what day you lay the Plaintiff to be possessed, and what time after you lay it to be lost, and what time after the Conversion is.

In Trover. The Declaration is, That the third day of *May* he was possessed of the Goods, and the same day lost them, and that the fourth of *May Anno supradict.* they came to the Defendants Hands  
by

by Trover, and that *postea* (*scilicet*) 1 May Anno *supradicti*. he converted them. After Verdict for the Plaintiff, it was moved in Arrest of Judgment, that the Conversion is alledged to be before the Trover, which cannot be.

But *per Cur.* The *postea convertit* is sufficient, and the (*scilicet*) void. And in *Ejectione firmæ*, the like Case was cited, where the Ejectment was alledged, that *postea* (*scilicet*) such a day, &c. which was before the Lease; the (*scilicet*) was adjudged void, and the *postea ejecit* was good enough, *Trin. 15 Jac. Tesmond and Johns* cited in *Adams and Goos's Case*, *Cro. Jac. 96. and Cro. Jac. 428. Tesmond and Johns.*

Trover and Conversion of a Bond. It was moved in Arrest of Judgment, because he did not alledge the day nor place of the Conversion. *Sed non allocat.* for the denying to deliver it upon request is a Conversion, and the day, year and place are thereby alledged, which is sufficient. And Judgment was affirmed, *Cro. Car. 262. Wilson and Chambers.*

Judgment in Trover by *Nil dicit*; and Exception taken to the Declaration to stay the Filing the Writ of Enquiry, because no day of Conversion was laid in the Declaration, and held to be naught, 1 *Brownl. Rep. 8.*

*As to Places.*

*Vide infra Venue.*

If the place of the Conversion in a Declaration be not alledged, the Bill shall be abated, In Arrest of Judgment, *Cro. Eliz.* 76. *Hubbards Case.*

The time and place of the Conversion are to be alledged, for they are material, and for that they were not alledged, the Bill abated after Verdict, *Cro. Eliz.* 97. *Stransham's Case.*

In Trover and Conversion the Writ supposed, that such a day *apud Alston in Com. S.* he was possessed, &c. and so lost them, and the Defendant found them and converted them, &c. and in the Declaration, he shews the Trover and Conversion to be at *Alston* aforesaid.

*Per Cur.* In this Case, tho' the place of the Conversion be not shewn in the Writ, yet the Writ is good enough, for the Possession is supposed to be at *Alston*, and the Loss Trover and Conversion being all conjoyned with a Copulative, shall be intended all in one place, (*viz.*) at *Alston*; especially the Count mentioning the Conversion to be at *Alston*, and Issue there tried and Verdict, *Cro. Car.* 525. *White and Hanby.*

The



The Jury find the Trover, the Request or Demand and refusal, and found the Defendant Guilty of the Trover and Conversion, but they found no place where the Conversion was; the Plaintiff shall never have Judgment, 2 Bulst. 312. *Mathew and Straisme.*

*Of Uncertainties in Declarations in reference to Words, Phrases, Latin and Anglices, with some Rules.*

*In Wood and Smiths Case, Cro. Jac. 129.*

The Declaration is that he was possesst *De duobus Articulis (vocat')* Portals, *cum suspensis (vocat')* Hinges.

*Et de uno molendino (vocat')* an Hand-mill.

*Et de una Alveola (vocat')* a Washing-fat.

And *de quatuor Ollis Aeriis (vocat')* Brass Pots; whereas it ought to be *Ollis Abe-neis*, for there is not such a word as *Aeriis*. *Sed non allocatur*, for when it is added (*vocat'*) Brass Pots, that is as much as to say, (*Anglicè*) Brass Pots, which tho' it be not Congruous Latin, or in apt Words, yet its good enough, and the Court knows what's intended.

Trover and Conversion was brought of 2 Garbs, (*Anglicè*) Sheafs of Corn. Its naught and uncertain, it shews not what Corn it was, and the (*Anglicè*) is void;  
and

and therefore is no more than Trover and Conversion of so many Sheafs, which is altogether uncertain, and so adjudged, *March. Rep. 60. Hodges Case.*

*De 20 pieces or parcels of Wood is well enough, contra, of a parcel of Wares ; that is uncertain, 1 Keb. 508. Shepherd and Floyd.*

*De seperalibus vestimentis ad valentiam 10 l. without an (Anglisè.) Per Cur. Its uncertain. And Judgment was stayed notwithstanding 17 Car. 2. c. 8.*

*De Diversis Libris is ill. Contra, of a Library of Books, 2 Keb. 765. Elfrick and Acton.*

*De 300 Todd's Lane its good.*

So *Barrellis cervisiæ, Pipis Vini*, these are *vocabula artis*, to certify the Court, *1 Bulst. 126. Procter and Clifton.*

Trover and Conversion of 6 Tunns. Its incertain, and it ought to be shewed certainly, of what you do demand the quantity of 6 Tuns. *Per Cur.*

And the Council on the other side urged, That they then signifie nothing, and so no Damage is given for them. But this difference was taken, where a thing is mentioned that doth signifie nothing, there Damages cannot be given for such a thing, as *Osborn's Case.*

*Fulcrum Lecti* signifies a Bedstead, and the (*Anglicè*) which was added, (*viz*) *Curtains and Valence* was a mere Addition and were in English. But a Tun is a Measure, and well known so to be; and it is uncertain what the Plaintiff means by 6 Tunns, *Nil cap. per billam Stiles Rep. 482. Clark and Fitzwilliams.*

Trover of a Ship *cum Vergis & Remis*, not shewing the number, yet is good.

But *de Vergis* alone, without shewing the number is ill, 3 *Keb. 507. Borage and Killing.*

*De decem Juvencis* (*Anglicè*,) *Bullocks and Heifers.* *Per Cur.* Its well enough without saying how many; *Juvencus* being a proper word for both, and the (*Anglicè*) void.

But it was agreed, *de Ovibus & Matricibus* is ill, for not distinguishing, 3 *Keb. 693. Price and Davis.*

But *pag. sequent*, The Court inclined it to be good enough.

*Emery's Case*, of a Library and Books held to be good.

*De 20 numeris straminis* (*Anglicè*) *Thraves of Corn*, well enough; *ibid. p. 815, 830. Pieces of Hangings* is good enough.

So Trover for *Hides*, not shewing what *Hides*, and of 10 *Pieces of Timber* good, 1 *Keb. p. 34. Walcot and Tapping.*

## Actions and Pleadings.

Trover *De decem arboribus*, whereas the Trees were Timber-Trees, that were felled, and the word *Arbor* properly signifies a Tree that grows, according to the old verse, *Arbor dum crescit, Lignum dum crescere nescit*. By Rolls its good enough, *Stiles p.235. Popham and White*.

*De uno stato salis* (*Anglicè*) a Bushel of Salt. The exception was, That *Statum* had another proper signification, but because it was shewed to the Court, that *Statum* by one Dictionary was Latin for a Bushel, the Plaintiff had Judgment, *1 Brownl. Rep. p. 16*.

Trover was brought *de tribus ponderibus*, and the Plaintiff could not have Judgment, because this doth not signifie any certain weight, *Palmer's Rep. 393. Lawrence his Case, Latch. p. 216. in Walters Case*.

Trover *de 32 centenis udæ plumbi* (*Anglicè*) Lead Oar, its good.

So *de ponderibus casei* (*Anglicè*) Weights of Cheese, *3 Keb. 14. Dennis and Curtis*.

Trover *de trescentis* (not saying *ponderibus*) or any *Anglicè*, & *duobus quartis unius centenæ Pruinorum*, (*Anglicè*) Pruans its ill.

So *de duodenis fili*; had it been *de 300 ponderibus*, it had been well, *99 yards panni Lanni*, (*Anglicè*) Dowlas, *1 Keb. 498, 523. Clerk and Newman*.

Trover

Trover *de ducentis ponderibus æris & de ducentis ponderibus Plumb.* (Anglicè) Brass and Lead; and there wants an (Anglicè) for the *ponderibus*: And so uncertain what quantity of either; and therefore Judgment reversed, *Stiles 227. Powel and Hopkins.*

*De ducentis ponderibus* (Anglicè) Weights, *Medicamenti* (Anglicè) Druggs, good, *Stiles 224. Ernly and Allen.*

*Pro sex Abbacis* (Anglicè) Shelves (which are parcel of the Freehold) but its good, being *de Bonis & Catallis. De quatuor peciis operati ferri* (Anglicè) Dogs, is better than *pro sustentaculis*, which may be of Wood.

*De uno insigni*, (Anglicè) Sign of the Cross-keys is good, 2 Keb. 790. *Bateman's Case.*

Trover and Conversion, *decem parium Tegularum & Valorum*, (Anglicè) of ten pair of Curtains and Valence its good.

Trover and Conversion for several things, tho' it did not appear how many of each sort there were; yet in many Cases hath been held good, *Siderfin p. 445. Taylor and Wells.*

Tho' in *Washborn's Case*, *Stiles 358* De 11 pair of Hangings, and after a Verdict held to be ill.

Yet *de 10 Load of Pease and Beans* hath been adjudged good after a Verdict, *Siderfin ibid.*

Rule.

This Case in *Sanders Rep.* 74. hath good Reason, (*viz.*) In Artificial things as these are, there needs no other Description, but only to name them by the usual name, without shewing the quantity of the Yards or Stuff, 2 *Keb.* 629. 640. *Mesame Case.*

*De tribus parvis teniolis (Anglicè) Ribbands*, *Hales* held this to be uncertain, 3 *Keb.* 153. *Niller and Green.*

*De pare ocreat. & calcar, (Anglicè) Boots and Spurrs* is good.

So *Trespas de 2 Ovibus vervecibus & matric'* is good, tho' it would be ill in a *Replevin*, 3 *Keb.* 253. *Hancock and Hodges.*

*Trover* for *Stockings*, and saith not whether *Mens* or *Womens*, and yet good.

So for 2 pair of *Bodies*, *Stiles* 25. *Pl.* 58. *Cro. Car.* 837. 1 *Keb.* 21. *Dickensons Case.*

*De duobus Instrumentis ferreis, (Anglicè) Ploughshares and Coulters*: Per *Rainsford and Wild, ceteris absentibus*, agreed to be uncertain, 3 *Keb.* 209. *Esto and Brown.*

*De uno ferro igneo, (Anglicè) a Fire-grate*, is good after *Verdict*.

Rule.

For its taken for a Rule, if there be no Latin word, one may be made with an (*Anglicè*,) but not by general Terms. As *unum Instrumentum, (Anglicè) an Horse Cloth* is ill.

So when words before an (*Anglice*) do describe it particularly, as *unum Instrumentum pro tormento (Anglice,) a Sponge for a Gun* is good.

De



*De Instrumento magno de Ligno (Anglice,) a Skreen is good.*

*De tribus Ornamentis pro capite (Anglice,) Coifs, was ruled good.*

*Pro Instrumento ferreo (Anglice,) a Jack is good, 1 Keb. 61. 49. Smith and Warner.*

*Pro duobus pullis, is not sufficient without an Anglice, 1 Keb. 124. Ellis and Tarnley p. 176.*

*Pro cent' virgat texti de Serico & filis confect' without an (Anglice) is good; this being a sufficient Description, and being a new Stuff, possibly there is no proper English word for it, 1 Keb. 317. Willcox and Dennis.*

*De uno fuso (Anglice,) a Spindle for the Mill, is good.*

*De uno acerio pro mensa (Anglice,) a Table Board is good, 1 Keb. 575. Evers and Hopkins.*

*De uno pare igneorum ferreorum (Anglice,) a pair of Andirons.*

*De una pecia ferri (Anglice,) an Iron Crow is good, 1 Keb. 504. Haithwayt and Glascoth.*

*De duabus Mensis & Tapibis (Anglice,) two Tables and Carpets, good.*

*But Trover of a Ship cum apparatu after Verdict, ruled not good, 1 Keb. 390. Smith and Eason.*

*De uno scamino planca (Anglice,) a Planck Bench, good.*

*De una falsura (Anglice,) a Salting-trough is ill, 1 Keb. 420.*

Rule. But where the words are insignificant, as *de falsura* (*Anglice*) a *Salting-trough*:

Damages. So *de duodenis fili*, no Damages shall be given for them, 1 *Keb.* 428, 488. *Flower and Makew.*

*De decen castoribus* (*Anglice*) *Caster Hats* is good, 2 *Keb.* 649.

Damages. Damages shall be intended for that, that is well exprest, 2 *Keb.* 346. *Mason and Bambridg.*

*De tribus vitreis & mensuris* (*Anglice*), *Glass Bottles and Measures* good, 2 *Keb.* 681. *Kenion and Wells.*

*De tribus struibus feni* (*Anglice*) *Ricks of Hay*, is certain enough, 2 *Keb.* 703. *West and Davis.*

*Trover pro 4 Lebetibus* (*Anglice*) *Chaldron Carbonum* (*Anglice*) of *Coals*.

(*Anglicè.*) It was agreed to be uncertain, in that the (*Anglice*) cannot contain more than (*Chaldron*) which is signified by the Latin word. *Sed non allocatur*, but the (*Anglice*) is void, 2 *Keb.* 318. *Wilson and Wood.*

Rule. Its taken as a Rule: Where there is no proper Latin for words, there words of no signification may be framed to express them; and they are to be explained by an (*Anglice.*) But if you will explain significant words with an (*Anglice*), the (*Anglice*) is void, *March. Rep.* p. 16.

Trover-

Trover and Conversion *de decem capsis & cistis* (*Anglice*) *Chest and Coffers*, should they be distinct things it would be ill, but the Court held them to be all one, *Cro. Eliz.* 818. *Dracot and Pyor.*

*De sex capitalibus fibulatis* (*Anglice*) *Laced Coifs*, good, *1 Keb.* 710. *Whittinghams Case.*

When a Man expresseth a thing in English *Tortiously* taken, and Englisheth it, if the Latin word had not such signification with the English, its not good. But if he declare upon a Latin word, which had not any perfect signification; yet upon the Englishing of this, by which the meaning of the Plaintiff doth appear to the Court, the Plaintiff shall recover, and the Jury shall be intended to give Damages according to the Declaration in Latin, not having respect to the Englishing. But when there is a proper Latin word to express the thing taken, if the Plaintiff declares by another word it is not good, *per Fenner, Yelverton and Williams.*

*Popham* thought this too nice, and tending to the subversion of divers former Judgments. Therefore Trover *de una hama* (*Anglice*,) *a Crow of Iron* is not good.

Trover of divers Goods, and *inter alia* *do uno Risco* (*Anglice*) *a Trunk full of Linnen*, *ad valent* 20 l. & *de una pixide* (*Anglice*,) *a Box full of Bands, Cuffs and Shirts*, *ad valent*. 10 l. &c. *Verdict pro Quer.*

## Actions and Pleadings

and entire Damages. It was moved in Arrest, that *Riscus* is but a Trunk only, and (*Anglice*) full of Linnen to the value of 20 *l.* is uncertain. *Riscus* with an (*Anglice*) full of Linnen cannot be intended to be referred to Linnen, if it should be referred so, its uncertain, and then Damages are given upon this uncertainty. And if it should not be referred to Linnen, it was never intended that 20 *l.* should be for the value of the Trunk.

But *per Cur.* it shall be intended Damages shall be given for the Trunk only. & *Jud' pro Quer.* and affirmed in a Writ of Error, *Cro. Jac.* 664. *Bancroft against Coe.*

He counts that he was possess of such Goods, shewing what they were in *specie*, *cum aliis implementis ad valent' 3 l.* but expresseth not what they were, & *de suis*. But not the number; and intire Damages given, its ill, *Cro. Eliz.* 817. *Wood and Smith's Case.*

Declaration was *pro uno quarter grani* (*Anglice*) *Milncorn*, it should be *quarterium*. 2. He alledged he was possess *de una parcella piscium* (*Anglice*) *Ling*, and its not expressed what parcel. And Damages being entirely given, it was revert in all by Error, *Cro. Eliz.* 865. *Gramwel and Robotham.*

Decla-

Declaration was *pro uno pullo*, intending a Colt, its not good. *Pullus* signifies any young thing: And if an (*Anglice*) had been added it had not made it good. For an (*Anglice*) shall never aid, where the Latin had not any colourable signification of that which is in English. As *quoddam Instrumentum* (*Anglice*) a Grid-Iron is not good, for the Latin imports no such thing. Otherwise, if it had been *quoddam Instrumentum, ferreum Siderfin* p. 60. Ellis and Yarrow, vide p. 81. Willis and Dennis.

Therefore *Floid and Morgans Case*, Stiles p. 327. is not Law. Where Rolls said, *quoddam Instrumentum ferri* is too general to express any thing. But he is mistaken.

*Pro quadragint' ulnis texti de serico & pilis*, without an (*Anglice*) it may be good.

Declaration was *de plancis granarii*, (*Anglice*) the Planks of a Granary. Of Books in a Study is good, by the Addition of Study, *Siderfin* p. 98. *Maybu and Flower*.

Trover for the Sticks and Balls of a Billiard Table. And *per Car.* its certain enough. It shall be intended the Sticks and Balls that belong to a Billiard Table, *Siderfin* 263. cited in *Pledalls Case*.

Trover

Trover for Books and Stockings good, *Stiles* 25.

*Decem coria (Anglice) Hides*, good, *Stiles* 64. *Pool and Coply*.

*De uno vestigio (Anglice) a Footstool*, ill. *Stiles* 69. *Robinsons Cafe*.

*De 5 peciis stanni (Anglice) Pewterdishes*, *Stiles* p. 102. *Leving and Gamble*.

Rule.

*Per Rolls*, one may describe a thing in a Declaration, if there be not a proper word to express it, and if it be so described, that the Jury may know what is meant by it, its well enough, *Stiles* p. 136. *Heyford and Hobson*.

*De sex parcellis plumbi cinerij (Anglice) Pewter-porringers*, tho *parcella* be uncertain, yet it was held good. Had it been *peciis*, per *Hales*, it had without doubt been good. *Stiles* p. 199. *Graves and Drake*.

*De decem doliis spirituum (Anglice)* 10 *Hog-sheads of Spirits*, good, *Stiles* 225.

Plaintiff declared, That he being posselt of these Goods (*tribus duodenis chirotbecarum (Anglice) Gloves*) *A.* enters a Plaint in Land against *B.* and by Attachment Attaches the said Goods, knowing them to be the Plaintiffs at such a place. Action lies, and tho' *duodenis* be ill Latin, yet the Declaration is good. And when such Declaration had ill and good words, Damages are intended to be given for the good, *Siderfin* p. 16. *Car. 2. Sanders and Powel*.

In



In B. C. it is *Attachiat' fuit ad respondend.* In B. R. it is in *Custod. Marr' Marr' &c. pro eo videli' qd' cum. Formula Narrat'* in Trover in B. C. *Modus Intrandi*, 13 in B. R. *Modus Intrandi* 14. *vid. infra.*

Trover for 2 Pieces of Cloth, and faith not whether Woollen or Linnen, yet good, *Stiles* 419. *Isler and Windsor.*

Error is assigned: Because he faith, he was posselt *de 300 Cordis Ligni*, and the Defendant *Cordas præd. Ligni cepit* without saying any particular Quantity: But *non allocat.* *Maynard and Bassels Case*, *Mor.*

Take this for a Rule: When a thing is expressed in Latin with an (*Anglice*), <sup>Rule.</sup> if the Latin word have no such signification as its Englished by, its not good; but if it have no perfect signification nor elegant; yet by Englishing of it so as the meaning of the Plaintiff appears to the Court, the Plaintiff shall recover, and the Jury shall be intended to give Damages according to the Declaration in Latin: Where a Latin word in a Declaration is falsely English't, the English word shall be adjudged void, and the Latin good, *Pract. Reg.* 352.

The Latin is the Declaration, and if more be in the (*Anglice*) than the Latin, it is void for to have more, as the Case *supra.*

*De uno Risco (Anglice,) a Trunk full of Linnen.*

*Osborns Case* was *de uno Lecto. (Anglice) a Bed with Curtains and Valence.* And Damages given, and doth not say for the Bed only, yet good, 2 *Rolls Rep.* 254. *Bancrofts Case.*

But enough and too much of this: If the Clerk cannot find a proper Latin word, let him Coin one, or make an apt description.

Rule.

If some of the things be only in English and the Latin omitted, yet Damages shall be intended only of the other things; otherwise, if the Detendant be found expressly guilty of this, and acquitted for the other things, *Siderfin p. 263.*

But I will end this with a merry Story of a Clerk, who was drawing a Declaration in Trover for several Goods, amongst the rest he meets with an Instrument for which he could not find a proper Latin word, but briskly goes on; and *de uno Tweedledum, Tweedelton, Tweedledum twea (Anglice) a pair of Bagpipes.* And of another who could not readily tell what was Latin for a Stick. But he very logically concludes thus. *Candela* is a Candle, *Candelabrum* a Candlestick, *Ergò brum* is Latin for a Stick; but he that rendered the word *Ladder* by *adolescencior* was wonderfully cunning, because he knew *adolescens* signified a *Ladd.*

*Quod*

## in Trover and Conberfion.

77

*Quod quer' fuit poffeff. de bonis quæ amiffit.  
& quæ devenerunt ad Manus Def. per Tro-  
ver, qui ea vendidit. Ra. Ent. 5. Dyer 121.  
Hern. 149, 251.*

Trover by a Noblemans Houskeeper  
and Yeoman of his Wardrobe for a  
parcel of Silks loft ; for which the No-  
bleman turned him out of his Service,  
*Modus Int. 14.*

*Narrat' pro Separalibus rebus, Halberi' Cor-  
flet, Pike, Sword, vid. Ent. 264, 265. vid.  
Browns Formul. 386, 789.*

C H A P.

## C H A P. VII.

*Of the Pleadings.*

**A**S to the Pleadings in this Action, they made a considerable Figure in our Law Books. And in truth their Pleadings were fine and curious. But of late times, the Courts have declared, That in what Cases a Man may legally justify, in such he may plead not Guilty, and give the Special Matter in Evidence; tho' in many Cases a Man may and must plead Specially, as you will observe in the perusal of the subsequent Cases. However, for the sake of the Ingenious Student, who would be loath to acquiesce in a General Issue; but would dive and penetrate into the Reason of our Cases and Presidents, in the time of these illustrious Lawyers. *Wray, Anderson, Popham, Coke, &c.* I have made a Collection of some Rules as to Pleadings and Traverses, which I am sure will not be unacceptable to them;

Form *del plea per non cul.* 1 *Brown.*  
389.

*Colour.*

*Trover de ligno.*

Bar. qd' Rex seifitus de boscis unde, &c.  
Concessit Def. in Tallio qui succid' arbores &  
done Colour.

Repl. qd' quer' fuit seifit' de aliis boscis ubi  
arbores crescebant Et Travers. qd' arbores  
crescebant in boscis Def. Co. Ent. 41.

Trover de script. Colour qd' Def. perdidit  
scriptum qd' J. invenit & dedit quer' qui  
illud perdidit & qd' devenit Defendenti, Ra.  
Ent. 209.

*General Rules and Maxims.*

If the Plea in Bar doth not answer the Demurrer,  
Declaration, ( as in Trover the Defen- <sup>General or</sup>  
dant justifies for Toll which is no Con- <sup>Special.</sup>  
version,) then he that Demurs need shew  
no cause of his Demurrer, tho' the Plea  
do amount to the General Issue. But  
where the Bar doth answer the Decla-  
ration (as in Ejectment or Trepafs) the  
Defendant Pleads his Freehold and gives  
no Colour, or otherwise Pleads infor-  
mally; in this case the Demurrer must  
be Special, shewing the Cause, *Triv.* 18.  
*Car.* 2. *Skewington and Reynolds Case.*

It

Rule.

It is a good Rule in Justifications. He which will make a Special Justification, ought to make it of such a thing which is not justifiable to be done, unless for some Special Cause. Otherwise, it will amount to the General Issue, *vid. infra.*

If he which Pleads in Bar is prescribed to a certain time, he ought to shew the day of his Act certainly: If one justifie for Common between *Lammas* and *Canlemas*, he ought to shew certainly the time of his using it, so as it may appear to be done within the time. So he who justifies by Licerise, Warrant or Authority, ought always to shew the time certain of his justification, *Plowd. Com. 33. b. Colthirst and Bejushin.*

But by *Twisden*, There is no Plea in Trover, but a Release, or not Guilty, every Special Plea in Justification being Tantamount, 1 *Keb. 305. Devees Case.*

Defendant Pleads in Bar of the Action and Intitles himself by a Trover in *London*; without making any answer to the Property alledged in the Plaintiff, and without any Traverse, its ill. No colour will serve in this Action, but he ought to have Traverse *absque hoc*, That they were the proper Goods of the Plaintiff, 2 *Bulst. p. 134. Helman and Karwith.*

And the Case of *White and Price* adjudged there: The Defendant by his Plea intitles himself to the Goods by a Sale of them to him made by, &c. and makes no answer to the Plaintiffs Property and



and Possession, that he was possess of them as of his proper Goods: And in the *Exchequer-chamber* ruled to be ill.

As to repugnancy in time, *vid. Declaration supra.*

The Conversion was supposed to be the 10th of *Sept. 40 Eliz.* And the Defendant saith, he found them the 20 of *Sept. 40 Eliz.* and converted them the 10th of *Sept.* which is incurable, *Cro. Eliz. 764. Pigot and Sympsons Case.*

In Trespass Colour of Possession given by the Defendant to the Plaintiff sufficeth, because the Declaration is general upon a supposal, without any title put in certain, and for that it is sufficient to answer a supposal with a Colour of Possession only. But in Actions of Trover, and in all other Actions where the Plaintiff makes title to the thing demanded, or to a thing for which he demands Damages; there the Defendant ought to make a better Title to himself, and to Traverse the Title of the Plaintiff, or else to confess and avoid it, *Yelv. p. 174. Priestlies Case.* Diversity.

As in Trover of Goods, the Defendant makes Title to them by Title Paramount, and that he delivered them to the Plaintiff to keep, by which the Plaintiff was possessed, and that the Defendant, as was lawful for him, took them as his own Goods. Adjudged no Plea, because he only answers the Title of the Plaintiff with a colour of Possession; but doth not

confess and avoid, nor Traverse the Title of the Plaintiff to the Goods, but gives colour of Possession without Right or Property.

Demurrer

If the Defendant admits a Property in the Plaintiff, he may plead any Special Matter to *Oust* him of it, or to justify what he hath done, and if there be no Demurrer with Cause shewn, that it amounts to the general Issue, it is for him, 3 *Cro.* 485. *Comins and Boyer.* Defendant pleads a Sale by a Stranger in a Market overt, Plaintiff Demurrs generally; adjudged for the Defendant, that cause ought to be shewed.

Outlawry  
pleaded.

After a General Imparlance one cannot plead an Outlawry, in Bar to an Action of Trespass or Case; but it must be pleaded in Abatement, except he be Outlawed after the last Continuance; for you shall plead nothing in Bar but what goeth to the Action. Now the Damages in Trespass, or the Case, are not forfeited by the Outlawry, because of the uncertainty, 1 *Brownl.* 42.

*Pleadings.*

*Pleadings.*

*What Pleas amount to the General Issue.  
And where the General Issue must be  
pleaded.*

When there is matter of Law pleaded that is not proper for a Jury, then tho' it amount to not Guilty, or the General Issue, yet there cannot for that cause be a Demurrer to the Plea, because it would perplex the Jury. A Release is a Bar in Law, yet may be given in Evidence: It may be pleaded without giving any formal Colour, because it implies, that the Plaintiff might have his Action else, and the Defendant need not intrust a Jury with a matter of Law, but refer it to the Consideration of the Court. In Trespals for taking away Goods, the Defendant pleads, he bought them in Market overt; this is a good Plea, because it acknowledgeth that the Plaintiff hath a good cause of Action, if it had not been for the Properties being by Act of Law altered and vested in the Defendant; and a Discharge in Law from the Action, is most natural and proper to lay before the Court, and represent it as a Matter of Law, and not leave it to the Laygents to enquire of.

Colour.

The Case of *Rockwook and Feasar, Cro. El. 262*, seems not to be Law now. The Defendant pleaded long time before the Conversion, supposed to be, *J. S.* was posselt of the Goods (as of his own Goods at *B. in Norfolk*) and that he before the Conversion supposed, did casually lose them, and they came to the Hands of *J. P.* by Trover; who gave them to the Plaintiff, who lost them in *London*; and the Defendant found them, and he afterwards converted them to his own use by the command of the said *J. S.* The Question was, Whether this amounted to the General Issue. *Per Cur.* its a good Plea, for it confesseth the Property and Possession in the Plaintiff, against all but the lawful Owner: And the Book adds, *Coke* devised this Plea to alter the Tryal, but the Law is since then altered, or at least the Opinion of our later Judges. However, it might have been demurred to.

Trover for divers Loads of Corn. Defendant pleads and intitles himself to them as Tithes severed. Plaintiff Demurred Specially, because the Plea amounts but to not Guilty. Judgments *pro Quer.* For this Action comprehends Title in it, and therefore this Plea not allowed, *Cro. Car. 157. Lynnet and Wood.*

2 *Bulst.* p. 204, 205.

Trover

Trover and Conversion for eight *Hei. Distress.*  
*fers.* Defendant pleads a Rent Charge  
 granted to B. his Executors and Assigns;  
 and he died Intestate, and F. Administred,  
 and the Defendant as Servant to F. di-  
 strained them for Arrears, &c. and put  
 them in a Pound overt, which is the Con-  
 version. The Plaintiff Demurrs, the Plea is  
 not good, for he hath not confessed any  
 Conversion, for in the Pound the Beasts  
 were in the Custody of the Law. And  
 so it amounts to the General Issue, *Noy p.*  
*46. Salter and Butler.*

Defendant pleads, That he distrained  
 them for a Rent charge, *absque hoc* that  
 he converted them, its ill. For its no  
 Conversion at all, and so amounts to  
 the General Issue, *M. 9 Jac. B.R. Davies*  
*and Kman.*

Distress for Damage Fesant amounts  
 to the General Issue, *Cro. Eliz. 433. Af-*  
*cue and Sanderson, So for Toll, Hob.*  
*187.*

One pleaded a Plea that amounts to  
 not Guilty. And it was doubted by the  
 Court, whether they should compel the  
 Defendant to plead not Guilty, or award  
 a Writ of Enquiry. But it was resolved,  
 a Writ of Enquiry should be awarded.  
*Cro. Jac. 319. Austin and Austin.*

The Form of a Demurrer, for not tending the General Issue.

*Et quod placitum præd. tendit ad Generalem exitum solummodo & quod Generalis exitus placitari debuit.*

W. J.

The Plaintiff declares, That the Defendant found his Goods, and delivered them to persons unknown, *Non deliberavit modo & forma* is no Plea, but he ought to plead *non cul.* for a Tort is supposed, 1 Leon. 222. Bro. Aſſ. sur Case. 109. Mod. Rep. in Scot and Manbys Case.

Its no Plea, to say that the Plaintiff was not posselt of these Goods as of his proper Goods; but he ought to plead not Guilty to the Misdemeanor, and give in Evidence, that they were not the Goods of the Plaintiff, 1 Leon. 222. in Vandrinck and Archers Case.

Upon Sale to persons unknown, the Defendant pleads *non vendidit modo & forma, & hoc paratus, &c.* it amounts to the general Issue, Dyer 121. Anders. 1. 30. Lord Monteagles Case.

The Defendant being Sheriff justifies by a *Fieri fac.* (which amounts to not Guilty,) so the Defendant justifies as Damage Felant; for in neither of these Cases is any Conversion confest. So a Trverse *aliter vel alio modo*, Cro. Eliz. 443.

A/cue



*Ascue versus Sanderson, and p. 435. Dee versus Bacon.*

Trover by Executor, Defendant pleads the Testator died Intestate, and that Administration was committed to A. who sold the Goods to the Defendant. *Per Cur.* On Demurrer this amounts to the general Issue. So in case of Money delivered as a Pledge, 1 *Keb.* 318. *Tarling and Dalton.*

Trover for an Horse. The Defendant pleads he was a Common Innkeeper, and he took the Horse to Livery at Rack and Manger, and the Horse died in his Custody. This Plea is not good, for it amounts but to not Guilty, 1 *Roll. Rep.* 22. *Whittacre & Collet.*

Trover by a Citizen of Colchester, against the Toll of the Citizens of London for taking his Goods. The Defendant pleads *non cul.* Special Verdict, and the Citizens of London proved by divers Records and Entries in their Books, that the Citizens of Colchester have paid Toll. The Question was, Whether this be good Evidence on the Issue *non cul.* or whether it ought to be pleaded Specially.

And *per Cur.* This is not like a General Action of Trespass, for there he ought to plead specially the Custom for Toll: But in this Action every thing which proves the Conversion Legal, may be given in Evidence upon the General Issue, *Jones Rep.* 240.

The City of Colchester against the City of London.

Its no Plea to say the Plaintiff was not possessed *ut de bonis propriis*; but he must plead not Guilty to the Misdemeanour, and give the other Matter in Evidence, 33 H.8. and Br. *Action sur le Case*.

The Defendant pleads, the Plaintiff did gage the Goods to him for 10 l. and that he detained the Goods for 10 l. its no Plea, he ought to plead not Guilty, and give this Matter in Evidence. For the Action doth suppose a wrong which the Defendant ought to answer, *Mod. Rep.* 138. 4 Ed. 6. *Action sur le Case*, 113.

Troyer of certain Loads of Corn. The Defendant pleads, That before the Conversion he was seised of certain Lands called, &c. and that the Corn whereof, &c. was there growing, and that he did sever it, by force of which he was possessed, and the same casually lost, and that the same came to the Hands of the Plaintiff, and the Plaintiff casually lost the same, and that the same came to the Hands of the Defendant at H. and he did convert the same *prout ei bene Licuit, &c.* the Plaintiff Demurrs. *Per Cur.* its not good, and amounts but to the general Issue; for the Defendant pleads he took his own Goods, which is not any answer to the Plaintiff, *vid.* 22 Ed. 3. 18. and then he doth not say, he was seised at the time of the Severance, and

and then it might be he had severed the Plaintiffs Corn which was material.

But as to the first exception, The Court *ex officio*, ought to cause the general Issue to be entred, and the Plaintiff ought not to Demur upon it, 1 Leon p. 178. Ward and Blunt.

Trover for a Mare. The Defendant pleads, that after the Trover alledged, he redelivered the Mare to the Plaintiff such a day, which he accepted. The Plaintiff Demurrs Specially, because it amounted to the general Issue. Judgment *pro Quer.* 2 Keb. 405, 437. Denny and Terry.

Its a good Rule which is laid down in 1 Roll. Rep. p. 1. Hill and Hawkes Case, as to Justifications. *He which will make use of a Special Justification, ought to make use of such a thing, which is not justifiable to be done, unless for some Special Cause. Otherwise, it will amount to the general Issue.*

As in Trespals for Timber, the Defendant saith, That a Stranger was possessed and gave this to him; *absque hoc*, that he was culpable to the Plaintiff; this was naught, and but the general Issue.

So in Trover, for this Rule should be well observed. The Defendant pleads the taking at L. by Force of a Custom, which amounts to a gift in Law, and afterwards justifies the Conversion at D. This is no more than not Guilty; for it is as much as if he had said, that an Estranger gave them to him at L. by force of which he con-

converted them at *D.* This is but a Conversion of his own Goods, and therefore amounts but to not Guilty.

Sheriff in Trover brought against him justifies *J. S.* recovered against the Plaintiff 100 *l.* and he took the Goods in Execution, &c. He ought to plead *non cul.* *vid. Cro. Eliz. 433. Ascue and Sanders.*

In Trover the Title of the Plaintiff ought to be expressly answered; and the giving of Colour of Possession to the Plaintiff without Right or Property is not good. The Defendant pleads, that *J. S.* gave the Goods to him, and that he lost them, and the Goods came to the Hands of *J. S.* who gave them to the Plaintiff who lost them, and they came to the Defendants Hands, this Plea is not good: For he doth not confess and avoid, or Traverse the Title of the Plaintiff alleged. *Aliter* in Trespass, *Yelv. p. 174. Prestly versus White.*

In Trover the Defendant makes Title to the Goods Paramount, and that he delivered them to the Plaintiff to keep, by which the Plaintiff was possess'd, and the Defendant took them as his Goods *prout ei bene licuit.* Its no Plea, because it answers only the Title of the Plaintiff with a Colour of Possession.

The Defendant pleads, that long time before the losing, one *C.* was possess'd thereof, *ut de bonis suis propriis*, and sold them to the Defendant, who before any notice that they were the Goods of the Plaintiff,

Plaintiff, and before any request, sold them to persons unknown. This is not a good Plea; he confesseth the Conversion, (*viz.*) the Sale, but hath not conveyed to himself a sufficient Title to the Goods, by which he might justify the Conversion; for the Plaintiff declares of a Conversion of his own Goods; the Defendant justifies, because the Property of the Goods was in a Stranger who sells, &c. which cannot be a good Title to him without a Traverse; except he saith, he had bought them in Market overt. *Quare* if the Sale of the Goods be a Conversion, 1 Leon. p. 223. *Vandrinck and Archers Case.*

Trover and Conversion laid *apud castrum Eborum*. The Defendant pleads a Fair at D. in Com. D. and the Lord hath Toll there and so a Distress, which is the same Conversion, *absque hoc* that he was Guilty *apud castrum Eborum aut alibi* within the County of Y. Ill Plea. For here he hath not only a lawful cause to take the Cow, but as lawful a cause to detain it against demand, as a Distress till Toll be paid; yet he denies not the Plaintiffs Property, nor doth any thing against it, nor answers to the Point of the Action, *Hob. p. 187. Hutton p. 10. Agard and Lisle*, That ought to be traversed, or else confessed and avoided.

of

## Of Traverses.

The Defendant in his Special Plea, must either confess and avoid, or else Traverse the Title of the Plaintiff, *vid. infra.*

The Conversion is Traversable, for it is the substance of the Action. For if one Finds and doth not convert them, no Action lies, *Cro. Eliz. 97. Stranesham's Case.*

But in *1e Lon. 247. Ward and Blunt's Case*, Generally the Conversion is never Traversable, except in Special Matter. As *A.* lends Money to *B.* and *B.* delivers a thing in Pawn; here the Conversion is Traversable. The Defendant pleads, The Money was delivered to him to keep till *A.* and *B.* were agreed who should have it, and that *A.* and *B.* were not agreed, *absque hoc*, that he converted, &c. so in *2 Bulst. 307. 2 Leon. 94.*

Trover of an Horse, and selling him, and converting the Money to his own use. The Defendant confesseth it was the Plaintiffs Horse, and that one *J. C.* found and delivered him to the Defendant to restore upon request; whereupon he re-delivered him to the said *J. C.* before the Action brought, *absque hoc* that he sold him, and converted the Money to his own use. And it was Demurred, because he



he could not Traverse the Conversion. But *per Cur'* it may well be traversed: But, in regard he hath here traversed the Conversion of the Money to his own use, which is not materially alledged in the Declaration, but is superfluous, and by his Traverse hath made it to be part of the Issue, the Traverse is therefore ill in that point. And the Demurrer being upon the Traverse, it was adjudged *pro Querente*, *Cro. Eliz.* 554. *Kinnersley and Bernard*. The Property is not Traversable, nor the knowing 1 *Leon.* 222, 223, 189.

Traverse not good, because he doth not confess any Conversion, *Cro. Eliz.* 43, 435. *Dee and Bacon*.

Trover and Conversion to his own use, *per venditionem quibusdam hominibus ignotis*. The Defendant pleaded, The Goods were bailed to him to bail over to J. S. to whom he had delivered them, *absque hoc* that he did convert them to his own use, *per venditionem hominibus ignotis*, this is not Traversable: For the conversion to his own use is the ground and cause of the Action, and not the the selling of them, 2 *Leon.* p. 13. *Anonym.* Case.

Matter in Law is not Traversable.

Trover of 2 Tun of Wine. The Defendant pleaded, by grant from the King, and justifies as chief Butler for Prifage; and that he took and converted them to the use of King. Exception taken was, The Defendant doth not Traverse the Conversion supposed by the Plaintiff, for that

is

## Actions and Pleadings

is a Conversion in the Defendant himself, and he justifies a Conversion to the use of the King, which is another Conversion.

But *per Cur.* the *devener' ad manus*, and intermeddling with the 2 Tuns is confest by the Defendant to be to the use of the King; and this is matter in Law upon the Plea in Bar, which is for the Court to judge upon, and shall not be traversed. And if the seizure to the Kings use is not lawful, then the Defendant shall be adjudged himself to be Guilty of the Conversion; because he hath confest an intermeddling with the Goods, *Yelv. p. 199, 200. Kennicot and Began.*

### Traverse of the Place.

When a Justification ariseth upon a Sale, then I need to Traverse no more than the place alledged, and not go to the whole County. *Aliter* in a transitory Trespass, as for Battery, taking of Goods, &c. and then the whole County must be traversed, *Brownl. Rep. 17.*

The whole Court was of Opinion, That Localthings shall not be made Transitory, by laying the Action in a Foreign Shire, as for Corn growing in one Shire, and an Action of Trover brought in another, *1 Brownl. Rep. 35.*

Trover

Trover and Conversion of certain Vessels of Cyder in *London*. The Defendant saith, The Plaintiff delivered them at *London* to be spent in *Devon*, by force whereof he converted them in *Devon*, *absque hoc* that he converted them in *London*. Demurrer. *Per Cur.* the Plea is not good, because the justification is not Local but Transitory. The Defendant had also pleaded, they were to be delivered to him, to be converted in *Devon*; and alledgeth no place of the delivery, 1 *Rolls Rep.* 396. *Phillips and Weekes*.

The Matter of the Conversion might also well have been given in Evidence in *London*. A like Case to this is in the same Report and Page, *Bush and Luxborough*.

Trover of certain Oaks in *Exeter*. The Defendant conveys the Property before the Conversion to the Marquess of *W.* and pleads, that by force of his command he took them in *K.* in *Devon*, *absque hoc* that he converted them in *Exeter*. This Plea is not good, for its all one with the Case above, and amounts to a not Guilty. And this justification is not Local, but might have been justified in *Exeter*, And when the Justification is not Local, he shall not Traverse the place. Also he doth not answer the Plaintiffs Property; for perhaps these were the Goods of the Marquess before, and yet the Plaintiffs Trees at the time of the Conversion. Judgment *pro Quer.*

Tro-

Trover and Conversion laid at one place, The Defendant justifies the Trover at the same place, and the Conversion at another place, without traversing the place where the Trover and Conversion was laid. And good; tho' it be neither confessed nor avoided, nor traversed. It is true, in the former Books it was a Question, but now a Man may not Traverse the County; unless it be upon a Special Justification in another place, by Reason of his Office or such like, 1 *Rolls Rep.* 44. *Hill and Hawkes.*

In Trover the Defendant pleads Bailment of the Goods to him, to redeliver to another in another County, (the Plaintiff having declared of a Bailment in *London*, and a Conversion in *London*) he pleaded Bailment to redeliver to another in the County of *Oxon*, which he had done, *absque hoc*, that he converted the same at *London*, *aut alib' extra Comit' Oxon.* The difference in our Books is, where one doth justify in another County; and shews a special cause of Justification, as by Reason of a Special Warrant of a Justice of Peace in a Special place; there such a Traverse may be taken; but where the thing is merely Personal and Transitory as this is; *aliter*, 3 *Bulst.* 209. *Phillips and Weeks.*

C H A P. VIII.

*Of Special Pleas. As by Sale in Market Overt, Impignoration, Distresses, Waifs, Estrays, Recovery en autre Action, Release, License, Stat. of Limitations, &c. as also of the Replication De injuria sua propria, &c.*

*By Sale in Market Overt.*

**T**HE Defendan Pleads, That London is an antient City, and that within the same every day is a Market for all Goods, to be sold in every part of this City in every open Shop, every day besides Sundays and Festivals, between Sun-rising and Sun-setting, so as one of the Contractors be a Freeman. And that he being a Freeman such a day, &c. bought these Goods in open Shop, &c. and so justified the Conversion. *Per Cūr.* the Plea is not good: For the Custom is too general, that every Freeman might buy all manner of Wares in every Shop, for then a Scrivener might buy Plate in his own Shop, which he cannot do, *Cro. Jac.* 68, 9. *Taylor and Chambers.*

The Defendant justifies by Sale in open Market; its no Plea, because it amounts to the general Issue, *Cro. Jac.* 165. *Johns and Williams Case,*

H

And

And so the Custom of London was pleaded, that the Property should be altered by Sale in a Shop. It was over-ruled no Plea, because it amounts to the general Issue, 1 Roll. Rep. 397. *Row and Tompson; and Croke cited Ward and Blunts Case*, to be adjudged, *vid. Co. Ent. Harway and Ter-tingham*, 45 Eliz. Rct. 59.

Defendant pleads *le Custom per Market Overt London. Pl. Rep. qd. Convertit de injuria sua propria, & traverse le sale per estrang' tiel jour. Def. demur' special' ad replicat' & pro causa monstrat quod Quer' Traverses le jour de Sale, quando le Sale est solement traversable*, Hern. pl. 251, 252. H. 2 Jac. Rot. 706.

*Trover pro Temia (Anglicè) Norwich Lace, Justif. per emption' in Civitat' L. in aperta Shopa Def. 1 Brown. 387.*

*Pro emption' in aperto mercatu in villa de D. 1 Brown, 389.*

*Per Consuet' de Market Overt, Tomps. 62. 69. b. 234.*

*Similis Bar Relax' per maintenance Demur' & traverse le Sale tempore diei, Demur' Hern' 252.*

*Pled' emption' in aperto mercatu apud Civitat' Westm' Et sic ostendit mercatum & prescriptionem. Repl. per maintenance del Count' & Traverse del Plea, Robinsons Entries 448, 9.*

*Placitat qd' emebat in aperto mercatu apud Kingston super Thames. Repl. de Injuria sua propria. Rejoynd' per maintenance del Plea, & Issue superinde, Rob. Ent. 450.*

*Trover*



*Trover pro Plate per Attorney sur Atachment del Priviledge. Def. Pleads Sale in London, &c. Repl. al un part del Bar qd' Def. de son Tort convert' le Plate a son use Demesne & Traverse le Sale per le Stranger iiel jour. Demur' special, quia la emptio & non le Sale est Traversable, Rob. Entries 24, 25.*

If the Defendant (in Trespas) Pleads *vendition* in Market Overt; this is good without giving Colour; tho' he saith, a Stranger was posselt of these as of his proper Goods, (contrary to *Ed. 4, 5, 6.*) 10 *Rep. 90. Lifords Case, 1 Roll. Rep. 273. Bisse and Tyler.*

Trespas for taking away his Cattle. The Defendant pleads, he bought them in Market Overt. Demurrer, Because the Defendant doth not say what day the Market was kept, nor whether it were out of Lent, according to the Patent. *Per Cur.* This ought to have been averred in the Plea, *Stiles Rep. 113. Marshal and Porter.*

In Trover for an Horse, the Case on Special Verdict was, B. had his Horse taken *Tortiously* from him, and it was sold in *Smithfield* by one who enters his name in the Toll-book, and was not known to him that kept the Book; and T. C. was entred as Voucher, where there was no such in *rerum natura*, and the sale wasto S. who sold him to the Defendant: And Judgment *pro Quer'* for the Statute of

31 *Elix. c. 12.* extends to Horses not Stollen as well as Stollen. But the Clause of Redemption in the Statute extends to Horses Stollen and to no other. Now in this Case the property is not altered, because the course prescribed by the Statute is not observed, in as much as no Voucher was in *rerum natura*, *Jones Rep. 163. Barker and Redding.*

Trover for a Gelding. The Case was, one P. Stole a Gelding from the Plaintiff, and sold him to the Defendant in open Market by the name of *Lifter*, and it was entred so in the Tollbook that *Lifter* sold him. The Question was, if this alteration of his name shall make alteration of the Property, altho' the sale was in open Market. *Windham and Rhodes* held this no good Sale to Bar the Plaintiff; and grounded their Opinion on Stat. 2 and 3. P. and M. c. 7. which provides, that no property of Stolen Goods shall be altered, unless the Name and Sirname of the Parties to the same, are written in the Tollbook. By others the Plea need not be special, *Owen 27. Gibbs Case.*

Sale Pleaded in Market Overt. Exception was taken, that it is not said Toll was paid. By *Hutton*, divers places are where no Toll is paid upon Sale in Market, and yet the Property is changed, and Judgment accordingly, *Herly p. 49.*

Sale in Market by Custom in London well pleaded, *Winch Ent.* 109.

Repl. qd' Def. invenit bona prout in Count, & puis delivered eux al dit R. T. qui per covin int' luy & Def. vendidit ea Def. Rej. per *Traverse* del covin & issue superinde.

Bar. qd' B. possessionat' de Equa vendidit eam Defendenti in aperto mercatu. Repl. qd' B. possessionat' de equa vendidit eam querenti, & *Traverse*, Ra. Entries 675. Vet. Entries 100.

Bar. qd' proprietaz Equæ fuit Def. quousque fuit capt' per Malefactores ignotos, & quæ postea venit ad Manus querentis extra cujus possessionem Def. illam cepit. Repl. qd' quer' emebat eam in aperto mercatu & solvit tolneum pro eadem ballivo Villa, Up. B. 151.

Qd' quer' deliberavit Spadonem cuidam B. ad vendend' pro illo. B. vendidit Def. (si placeret Def.) & dedit Licentiam Def. ad proband' per equitation' 3 Mille passuum, 1 Brown. 387.

De bonis conversis & venditis. Bar. qd' non vendidit bona, *Dyer* 121.

## Bar by Sale.

*Trover de Annulo justificat' by lawful buying of this, and open Sale of this again, and Traverse the Sciens of the Property to be in the Plaintiff, Rob. Ent. p. 30.*

*Qd' quer' vendidit Def. Repl. non vendidit, Ra. Ent. 675. b.*

The Defendant pleads before the Trover supposed, one *A.* was possessed of the said Goods as of his proper Goods, and sold them to the Defendant, and that he had not any notice, that the said Goods were the Goods of the Plaintiff. Upon Demurrer; the Plea is not good, for the Plaintiff may choose to have his Action against the first finder, or any other which gets the Goods after by Sale, Gift or Trover. By *Windham*, the Defendant may Traverse the Property of the Goods in the Plaintiff, 1 *Leon. p. 89. Galliard and Archer, p. 221. Vandrink's Case*, for part of the Goods, the same Plea as before for the residue, he was always ready to deliver them to the Plaintiff, and yet is. As to the first, There is nothing in the Plea Material or Traversable, for all the Plea may be true, and yet the Defendant not Guilty: As to the other Plea its clearly ill. He is ready to deliver, *Ergo* he hath not converted, 1 *Leon. p. 222. 223.*

Where

Where a Justification in Trover ariseth upon a Sale, there needs no Traverse of any more than the place alledged, and not the whole County, *Vide Prius sub tit. Traverse.*

*By Impignoration.*

Defendant pleads the Delivery of the Goods as a Pledge. Its not good, it amounts to the general issue, 1 *Keb.* 248. *Brown and Martin*, 4 *Ed.* 6. *Br. Action sur Case* 113. Its doubted there, whether he ought to plead not Guilty, and give the especial matter in Evidence. There is an *Anonymus Case* in 1 *Leon.* 247.

Trover of a Bag of Money. Defendant pleads, the Bag of Money was delivered to him as a Pawn to keep, till *A.* and *B.* were agreed which of them should have it, and that they were not yet agreed *absque hoc*, that he converted it to his own use. By *Wray* general Conversion is not <sup>Conversion</sup> Traversable, but upon such special mat- <sup>Travers-</sup> ter as here. Trover for one guilt Bowl. De- <sup>able.</sup> fendant pleads, it was pawned to him by the Plaintiff for Money lent, and that he kept it as a Pledge, for that the same Mony is not paid. The Conversion is traversable, *Hern. plead.* 177. *Hil.* 13 *Fac. Rot.* 3597. *Br. Action sur Case*, Pl. 113.

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*Simile* And that he is ready to deliver the Bowl upon payment of the Money. Plaintiff replies, and maintains his Declaration, and Traverseth the Pawning. The Defendant maintains his Bar, and issue *sur le Traverse*, *Hern. Pl. 209. M. 11. Fac. Rot. 529. Goldsborough.*

*De Cypho argenti qd' fuit impignorat' ei per quer. pro 40 s. cum interesse, Hern. 177.*

*Simil. Bar. Repl. per maintenance de Plea per Impignoration, Rob. Ent. p. 43.*

### *Attachment Pleaded.*

Defendant pleads, That before the Trover *J. S.* was possessed and indebted to the Defendant, who by the Custom of *Bristol* Attach't it in the Hands of *J. S.* Plaintiff replies, That he was possess'd at the time of the Plaint, and ever after, *absque hoc* that *J. S.* was ever possess'd. Defendant Demurrs, because the Replication was at large. Judgment *pro Quer.* *1 Keb. 211. Hawksworth and Jordan.*

*By*



*Per Distress.*

Trover for taking his Cattle by way of Distress, and selling them by Warrant from the Commissioners of Sewers. Defendant pleads all the special matter by way of Justification; good Exceptions were taken to the Plea, which *vid. Stiles* 12, 13. *Whitly and Fawcet.*

Defendant Pleads, he took them as Bailiff of the King, for Distresses upon a plaint in *Curia manerij*, and sold them: Its no Plea, upon a *Distringas* the Cattle shall not be sold, especially in a Court Baron, altho' it were the Kings Court, *Cro. Jac.* 255. *Yelv.* 194. *Gomersall and Medgate.*

Defendant justifies by Distress for Rent, *Cro. Eliz.* 901. *Salter and Butler*, *vid. supra tit. Traverse.*

*Bar qd' distrixit bona in messuag' pro redditu insolui' sur dimis. inde quer' qui requisivit bona districta ei liberari qd' Def. recusavit nisi solveret redditum. Et travers. qd' est Cul' aliter, 3 Brown. 483.*

*By*

*By Estray.*

Trover and Conversion of a Cow *apud* C. Defendant pleaded, that the Queen was seised in Fee of such a Manner, and demised it, and all Estrays therein to J. C. for Life, and conveys it by mean Conveyances to himself, and that their Cow came thither as an Estray; whereupon he seised her, and caused her to be proclaimed in two Market Towns next adjoyning. And the Plaintiff claimed Property, and refused to pay for her Feeding, and thereupon he denied to deliver the Cow. And traverseth, that he is guilty of the Conversion *apud* S. It was thereupon demurred.

1. Because he alledged not the Letters Patents.

2. Because he alledged not that the Proclamations were made in the Parish Church.

3. Because he traverseth the Vill. And it was adjudged, *pro quer*, Cro. Eliz. 716. Brownl. and Lambert.

*Trover de 2 bobus. Bar qd' boves vener' in maner' Defendentis, in quo ipse per prescript' habuit extrahur' Unus bos moriebatur de infirmitate, & Def. Proclamat alt' 2 diebus mercator', &c. Repl. qd' 1 bos obiit per nimium laborem, & Travers qd' obiit de infirmitate, & qd' Def. convertit alterum bovem, & Traverse qd' Proclamabat 2 diebus mercator', Co. Ent. 40.*

*By*

*By Waiver.*

In Trover for Goods. Defendant justifies as Servant to the Sheriff of *Middlesex*, because the Plaintiff had stolen these Goods, and carried them to *D.* in the County of *Middlesex*; at which place the Defendant seized them, *ut bona Waviata*. Its an ill Plea: He ought to have alledged, that the Felon waived them, *Cro.Eliz.611. Davis Case*.

In Trover for 20 Sheep. Defendant pleads, The Queen was seized of the Mannor of *N.* and that *malefactores ignot'* stole these Sheep from the Plaintiff, and brought them within the same Mannor, and there wayed them. Whereupon the Defendant as the Queens Bayliff seized them to the Queens use, which is the same Trover and Conversion; upon Demurrer the Plea was held not good, for the Conversion was not answered. It ought to be alledged, that the Felon fled, for that he was in fear to be apprehendeds, and for that cause waved them; for if a Felon carries away Goods, which he stole within a Mannor, and leave them there and then flies, the Goods are not waved, *Cro. Eliz. 693. Co. 5 Rep. 109. Foxlies's Case*.

In

In Trover for an Horse. The Defendant justifies *per bona Waviata* by Patent, not shewing it forth, nor shewing that any Felony was committed, which *per Cur.* he ought to do, 1 Keb. 509. *Queen's Coll. Case.*

*By Command.*

In Trover of two Load of Fitches: Defendant justifies by Command of two, who had the Freehold, *Popham 208. Sparrow and Sherwood.*

*Bar by Release.*

Executor brought Trover of Goods. The Defendant pleads, the same Executor had released to him. The Plaintiff replies, he was within Age at the time of making the Release. *Per Curiam*, the Release is no Bar, 5 Rep. 27. 1 Cro. 49. *Mor. 146. 1 Anders 177. 3 Cro. 171. 1 Roll. 730. Russell's Case*, there was no Consideration alledged for the Release; it shall not bind the Executor, for then it should be a *Devastavit*.

Trover by Executor, for Cattle lost in the Life of the Testator. Defendant confesseth the Count, but further pleads, a Release of the Testator. *Respication*, that it is not the Deed of Testator, *Hern. Pled. 123. Trin. 13 Jac. Rot. 643. Brown. Bar. per Relaxationem 1 Brown. 387.*

*Bar*

*Bar by Licence.*

One justifies the same day by Licence, yet he ought to take a Traverse, *Siderfin* f. 234. *Ellyots Case*.

If the Defendant pleads not Guilty, and gives the Licence in Evidence, this Evidence maintains not the Issue, 25 H. 8. *Brok* 81. *Plowd.* 14. a.

*Quod Licentiarvit un' estrang' impignorare Bona & Catalla prosecuritate soluc'onis denar' superinde mutuat. Repl. quod non Licentiarvis modo & forma, Tomps.* 61.

*Bar by Recovery in other Action.*

To an Action of Trover, or Debt on Bond, it is a good Plea, to say there is another Action depending in the Courts of *Westminster* for the same matter; but that there is an Action in an inferior Court is not a good Plea, unless Judgment be given, 5 *Rep.* 61. So in Action of Trespass.

Note, A diversity, where the Demand and Recovery is of a thing certain, and where of a thing uncertain, as in Trover for certain Goods in particular, The Defendant pleads, that the Plaintiff had brought such Action against J. S. for the same Goods before this Action brought,  
in

in which Suit he so far prosecuted *J. S.* that he had Judgment and Execution against him; and avers, that the Goods comprehended in both Actions are the same Goods; its a good plea. If two are obliged in 100 *l.* jointly and severally to *J. S.* there Recovery and Execution against one is no Bar against the other, for Execution is not any satisfaction of the 100 *l.* demanded. But where Trespass is made by two, which rests only in Damages, and the Plaintiff Recovers against one, and had Execution, there this is a good Bar against the other. Nay, the very Judgment is a sufficient Bar, for *transit in rem judicatam*, and the thing uncertain is now made certain; and they shall never resort to demand the uncertainty again, *Relv. 67. Brown and Wotton, Cro. Jac. 73. Mesme Case, 3 Leon 122. 1 Leon. 19. Leadalls Case.*

Defendant pleads, the Plaintiff had another Action upon the Case depending in *B. R.* for the same Trover, and the conversion of the same Goods, and prosecutes this Suit hanging the other, Judgment of the Bill. *Per Cur.* The Bill shall abate, but this must be understood after Count made, which reduceth the things to certainty in Trespass: But in Trover be it by Writ or Bail, it is as certain there as an Action of Trespass after Count made. But in Trespass it is parcel of the plea to  
say,



## in Trover and Conversion.

III

say, that the Plaintiff declared, 5 Rep. 61. *Sparries Case*.

If the Plaintiff be barred in Detinue, he shall be barred in an Action on the Case. So in Trespals, *per Coke 2 Bulst. 312. in Isaack and Clarks Case*.

If Baylee of Goods bring Trover or Trespals, and Baylor brings another Action of Trover or Trespals; he which first Recovers shall *oust* the other of his Action, and it shall be a good Bar to the other, 2 *Rolls Abr.* 569. 5 *H. 4.* 2.

In Trover, Defendant pleads another Action by the Plaintiff, and others for the same matter which is yet depending. Plaintiff replies, that the others (*viz.*) P. and H. are Dead. Defendant Demurrs, because in Trover the Action is not abated by Death, but Trespals. *Sed Curia contra*, that by death of any Plaintiff its actually abated. *Contra*, of one Defendant; but in Case of Execution the Survivor may hold on the Action, and a *Resp. ouster* awarded, 3 *Keb.* 127. *Dakers and Dunkin.*

Trover and Conversion of an Ox, 10 of June 38 *Eliz.* Defendant pleads, that at another time, (*viz.*) 26 *Eliz.* in B. R. the Plaintiffs and a fourth person who is now dead, brought Trespals against J. S. and two others of an Ox in 35 *Eliz.* to which the Defendant appeared and justified

justified as an Herriot. Upon which Bar the Plaintiff demurred, and adjudged against them, and pleaded all the Record in certain; and avers, that the Plaintiff in the said Action, and in this Action are one and the same, and so the Ox, &c. and that the taking in this and the other Action be all one, &c. *Walsmly and Kingsmil* held the Bar to be good, because upon the first Judgment upon Demurrer, the property of the Ox was admitted in the Defendant; therefore the Plaintiffs shall not have this new Action without new Cause. And he is privy to the Trespass and may well plead it, tho' he be a Stranger to the Record. And so the Court conceived, if it be intended for one and the same Cause, that he might well take advantage thereof. But *Anderson and Glaxville* conceived it no good Bar, for a Bar in a wrong Action brought, is not any Bar where a right Action is brought: As where one delivers Goods to keep, and brings Trespass against the Baylee for these Goods, and be barred by Verdict or Demurrer, that shall not be a Bar to him in bringing Detinue or Account, *Cro. Eliz.* 667. *Sir Humfry Ferrers, & al' versus Arden.* *Vide Ceo Case, Co. 6. Rep. 7. and in Winchester Ent.*

Defendant pleads, that an Action of Trespass was brought for the same Sheep and 2d Damages; that the said taking and driving the Sheep, for which the Recovery in Trespass was had, and the con-

conversion in this Action was all one, and that the said Judgment is yet in force. Plaintiff Replies, And confesseth the Action and Recovery for 2d. for the taking and driving; but saith, that the said 2d. was not assessed for the value of the said Sheep, and the Conversion: And *per Cur.* the Replication is good, for the Damages shall be intended to be given for the taking and driving; for otherwise, the Plaintiff should lose his property in the Sheep, and have but 2d. for them, *Cro. Car. 35. Lacon and Bernard.*

*Count pro Bove. Def. pleads Judgment pro eodem Bove in B. R. in Trans. sur D mur' versus quer. que est bar perpetual vers. Plaintiff, Winch. Ent. 62. Demur' inde.*

*Trover versus un Attorney del C. B. pur Barbits. Al part non cul': Al residue Def. pleads autre Action in Bar & Recovery sur ceo. Repl. Quer. confesse le Recovery en le bar, mes ouster dit, que les Damages assesse pur ceo ne fuer' assesse pur le value des Barbits neque pur le Conversion. Et ouster dit que le Def. per vendition ad converted eux a son use demesne, & Traverses le identity del Count & del Action pleaded en bar. Quoad Conversion des Barbits Demur' special eo qd' placitum illud ponit in alterius de recordo & in Lege ad exit. per patriam triand. Winch. Ent. p. 99, 100, 101, &c. Lacon and Bernards Case, Co. Entr. 39, 40.*

*By Execution. By Process del Ley.*

Trover and Conversion of Goods *apud D. in Com. N.* Defendant saith, he recovered a Debt of 20 l. in B. R. against the Plaintiff, and thereupon had a *Fieri fac.* directed to the Sheriff of York, who *apud W. in Com. Eborum* seized these Goods, and delivered them unto him in satisfaction of this Execution, and so justifies the Conversion. Its an ill plea.

*First*, Because he shews not where the B. R. was at the time of the Recovery.

*Secondly*, The Trover and Conversion is supposed to be in *Com. N.* and he justifies in *Com. Eborum* without Traversing, &c.

*Thirdly*, The Sheriff upon a Writ of *Fieri fac'* cannot deliver the Defendants Goods to the Plaintiff in satisfaction of his Debt, *Cro. Eliz. 504. Tompson and Clark.*

*Trover pro Incude (Anglice) a Smiths Anvil. Bar per justificat. per Bayliff Cur. Baron' que levied ceo & appraised & vendidit. modus Int. p. 40. vide le record infra.*

*Justification in Trover sur Stat. Staple & Extent & Liberate superinde placitat' ad Largum, Rob. Ent. 451.*

*Bar by the Statute of Limitations.*

An Action of Trover is within the Statute of Limitations of 21 *Fac.*

Defendant pleads the Statute of Limitations. Plaintiff Replies, The Defendant transported the Ship into *T. 10 Martij 19 Fac.* and there sold the same; and the Defendant remained in *partibus Transmarinis usque primum Maij primo Caroli*, and then he returned, whereupon *10 Octobr. 30 Caroli. apud L.* they required him to deliver the said Ship, &c. which he refused. *Per Cur.* It shall be intended, that the said Goods came a second time to the Defendants Hands, and then the Plaintiff required the delivery of them, and that after he converted them; and this is a new Conversion and a new Cause of Action, *Cro. Car. 245. 333. Swaine and Stephens, Jones 252.* If the Defendant remain beyond Sea, it seems that the Plaintiff is not barred by the Statute.

Statute of Limitations pleaded at large, *Tomps. 61. vid. President infra.*

*W.* brought Trespass by original Writ. Defendant pleads the Statute of Limitations. Plaintiff Replies, he took out an original Writ, within the time limited by the Statute. *Et hoc paratus, &c.* Defendant Demurs, because he shews not what Writ he sued forth. *Per Cur.* He need not, if the Writ be not good he may

have a Writ of Error. But the Conclusion is not good, for they have tied up the Defendant, that he cannot rejoyn, *Stiles* 329, 401. *Whiteheads Case*.

But by *Rolls*, the setting forth the original by the Defendant, and to conclude he is not Guilty, within six years, from that time, is not good. He ought to plead not Guilty within six years before the original sued forth, *ibid*.

In Trover the Defendant pleads the Statute of Limitations. Plaintiff Replies, He took out a *Latitat* such a Term against the Defendant for the Cause now depending, which was the time limited by the Statute. Defendant Demurs, because its uncertain; he saith, he took out a *Latitat* such a Term, and doth not shew what day of the Term he took it out.

*Per Roll*, they ought to have shewed the *Teste* of the *Latitat*; for the time is material in this Case. And they might have made it certain by pleading it specially, *Stiles* 128. *Coles and Sibsey*.

This Plea by the Statute is Good, tho' he doth not shew the continuances of his Proceedings; especially upon appearance, *Stiles Rep.* 379. *Whiteheads Case*, and pag. 401, 402, 403. 2 *Keb.* 188. 230. *Brown and Tripp*.

Plaintiff Replies, and sets forth a Writ against the Defendant; but it doth not appear there are Continuances down, till the bringing this Action, yet good, 2 *Keb.* 188, 230.

*Plea*



*Plea by Title of Tithes.*

*Cro. Eliz. 763. Pigot and Simpson.*

Trover for two Loads of Fitches. Defendant justifies by a Lease of Tithes *Latch* p. 8. 176, 184. *Bellamy and Balthorp.*

*By Demise.*

*Bar per Demise dun Colledg. pur ans a luy, & que biens fuer. linques en ceo & agreed que le Def. poit user eux jusque fine de Terme & si les biens serront spoyles, donque a payer les sum que un H. adjudgeroit & que il ad adjudged le value al 5 s. que Def. offer a payer al Plaintiff, Winch. Ent. 31, 32.*

*Plea by Custom. Vide Market-Overt.*

By the Custom of *Lichfield*, to Elect a Bell-man, which ought to repair the Street of the Market place, and to cleanse it, and that he shall have of every Bushel there brought to sell, one pint of Wheat, &c. and justifies. This is good, because the Custom is doubtful, therefore a good Bar. Otherwise, this Plea amounts to the General Issue, *Trin. 12 Car. B. R. Hill and Hawks Case.*

Defendant justifies the Conversion of the Horse by the Custom of England, that if an Horse be sent into any Common Inn, and the Inkeeper be not paid for his Meat, he may by Apprifers apprise the Horse and sell him, *Hern. pled. 162. M. 6. Jac. Rot. 1814. Brownley and Surrey, Robinsons Ent. 26.*

*Specialis justificat. placitat' per Consuetud. Civitat. Westm. & Curie ibid. tent. Et quod quer. Attachiatus fuit ad comparend. in eadem Cur. per Lapides in Narratione content. qui per default' Domino forisfact. fuer. & deliberat. fuer. Defendenti ad salvo custodiend. Rob. Ent. 447.*

In Trover, after Verdict, and before the day in Bank, Defendant pleads, that the Plaintiff who brought the Action as Administrator of J. S. being cited in the Court Christian, had *per debitam juris formam* the Letters revoked, and Administration committed to another. *Per Cur.* its no Plea, The Defendant shall be only aided by *Audita Querela*. And not by Plea, no more than in the Case of a Release, *Telv. p. 125. Ket vers. Life.*

*Trover pro Equo. Def. justifies come Bayliff dun Colledge pur un Waise infra Manerium Collegij Et les Letters Patent nemy fueront produced in Court. Ergo Plea male, Vid. Ent. p. 8, 9. sur Demur.*

*Plea*

*Plea by Arbitrament or Accord.*

In Actions where only Damages are to be recovered, Arbitrament or Accord is a good Plea.

*By Outlawry.*

Outlawry may be pleaded in Bar, in Actions of Debt, Trespass or Trover, because by the Outlawry the Debt and <sup>Note.</sup> Goods are forfeited to the King, but in *Transf. quare Clausum fregit*, and Actions on the Case, it can only be pleaded in Abatement.

Outlawry is a good Bar in this Action, 3 Leon. 205. *Markams Case*, and pleaded after Imparlance, 3 Leon. 205. *Mesme Case*.

*By Officers.*

If an Action be brought against a Ju- <sup>Note.</sup>stice of Peace, Major or Bayliff of a Corporation, Headborough, Constables, Tithingman or Collector of Subsidies, for any thing done, by reason of their several Offices; both they and all their assistants may plead the General Issue, and yet give the Special Matter in Evidence. And if the Verdict pass for the Defendant, or the Plaintiff be *Non-suit*, the Defendant shall have double Costs. 21 Jac. c. 12. confirms this Statute, and comprehends Churchwardens and Overseers of the Poor.

The Action brought against any of the said Officers, shall be laid in the County where the Fact was committed, and not elsewhere.

*Bar by Wager.*

Trover of ten Angels. Defendant pleads, that there was a Wager between the Plaintiff and one C. concerning the quantity of yards of Velvet in a Cloak: And the Plaintiff and C. each of them, delivered into his Hands ten Angels, and each of them agreed, that if there were ten yards, &c. that then C. should have them, and if not the Plaintiff; and alledgeth *in facto*, that upon measuring of the Cloak it was found, that there were ten yards of Velvet therein. Whereupon, he delivered them to C. *quæ est eadem Conversio*.

Gawdy held the Plea to be good, for the measuring was the fittest way to try it.

Fenner and Popham contra, That the Plea was not good; for it may be the measuring was false, and therefore he ought to have averred *in facto*, that there were ten yards, and that it was so found upon the measuring thereof: But it was but Evidence, and when he delivered it according to the intent of the Bargain, it is not any Conversion, *Cro. Eliz. p. 870. Ledesham and Lubran, and Judgment therefore pro Quer.*

*Plea*

Plea to the Jurisdiction of the Court.  
*Vide Venue.*

*Trover pro Cimba.* Defendant pleads, *Lit-  
teras patentes Dom. Admiral. & Jurisdicti-  
onem Curie Admiralitatis & qd' quer. non re-  
quisivit limbam infra Annum & diem Repl.  
qd. Cimba fuit requisit. infra Annum &  
diem. Repl. qd. Cimba non requisita fuit infra  
Annum & diem, & Issue sur nonclame,*  
Robinsons Entries, 445, 446, 457. *Midd.  
this Boat was Floatsome upon the Thames.*

Pleas by Executors, *vid. supra. tit.*  
*Actions brought by and against Executors.*

*Replication.*

Where *de injuria sua propria* is a good  
Plea or not.

*Trover of Trees.* Defendant pleads,  
Queen *M.* was seised in Fee of the Man-  
nor of *D.* in *Com. S.* where those Trees  
were growing, and granted it to the  
Defendant in Tail. Whereby he was seised  
thereof; and that *J. S.* cut the said Trees  
and granted them to the Plaintiff, who  
Lopt them, and the Defendant found and  
converted them. Plaintiff Replies, *de in-  
juria sua propria absque tali Causa.* The Re-  
plication is ill, for *de injuria sua propria* is  
not any Plea, where the Defendant makes  
Justification by claiming an Interest in  
the

the Freehold to himself : But where one claims not any Interest , but justifies by Cammand or Authoriry derived from another, it is otherwise ; and a Repleader was awarded.



## C H A P. IX.

*Venue, or where to Lay the Action.*

*Transitory Actions may be tried out of the County.*

**B**Y *Dodderige and Sir James Ley.* In the beginning of Actions on the Case upon Trover, when they arose upon the Cause of Realty, as Services, Harriots, &c. they were brought in Foreign Counties, where the Trover was supposed; but when the Mischief was spied, that this was a common means to draw Tryals of Freehold into Foreign Counties; by all the Justices of *England* this was agreed, that it was not sufferable, and this is now the Common Law, 2 *Rolls Rep.* 456.

In Trover and Conversion, the Plaintiff alledgeth the Conversion to be made in *Middlesex*, (of twenty Quartes of Corn) if the Title of Land where the Corn grew will come in Question, (as the Defendant may by his Plea make it) then the Plaintiff must lay the Action in the County where the Corn grew; But when a Suit (as this Case was) commenceth by Original Writ in the Kings Bench, and not Bill, it may be laid in any County where the Plaintiff pleaseth, and the Court may not compel him to change it.

But

But yet the Judges agreed the Case afore-  
said, 2 *Rolls Rep.* 14 or 141. *Floid and*  
*Bethold.*

It is said in *Minshal and Starkies Case*,  
unless the Trover be for profits of Land,  
the Action ought to be tried where it is  
brought, 2 *Keb.* 138.

The great question in *Rogers and Dones*  
Case was, Whether Trover being a Tran-  
sitory Action, arising within the County  
Palatine, may be tried out of it. The  
Authority of *Co. 4 Inst.* 213. was cited as  
express in the point, (*viz.*) That for Tran-  
sitory things, tho' in truth they were  
emergent within the County Palatine;  
yet by the General Rule of Law, the  
Plaintiff may alledge these to be done in  
any County where he will: And the De-  
fendant cannot plead to the Jurisdiction  
of the Court, that they were done, &c.  
in the County Palatine. But if the Plain-  
tiff suppose the Transitory Cause of Action  
to be in the County Palatine, that may  
be pleaded to the Jurisdiction. Other-  
wise of things Local. *Per Rolls*, The Rea-  
son why Transitory Actions may be laid  
in any County is, because otherwise Justice  
might fail, for the party may do a fact  
in one County, and then remove to ano-  
ther; so here the party may do wrong  
in the County Palatine, and then go out  
of it to avoid justice. But it went off  
upon the pleading which was naught, for  
it appears not whether the Custom ex-  
tends to *Wellington* where the Trover was,  
because

because it appears not whether *Wellington* lye within the County Palatine of *Chester* or not, *Stiles p. 331.*

Trover and Conversion for Jewels. The Trover was laid to be in *Kent*, but the offering the Goods to sell, being the Conversion of them, was in *London*. It may be laid and tried in *Kent* or *London*, as the Plaintiff will bring his Action, *Stiles p. 15. Earl of Manchester against Mrs. Samford, Co. 7. Rep. 1 Bullwers Case.*

Trover for 4000 Lemons *apud Ward. de All-saints in Bristow*, and Conversion of them in the same Parish. The *Venire fac'* was in *Bristow*, and not *de Warda de All-saints in Bristow*, which was the place of the Conversion, and so most certain, and this was assigned for Error. But *per Cur.* its well, and cannot be otherwise, for a Ward in a City is as an Hundred in a County, and thereof there never shall be any *Venue*. But its otherwise, where a Fact is supposed to be done at such a Parish, in such a Ward in a City, there the *Venue* shall be of the Parish, *Cro. Car. 164. Adams versus Hilkes.*

In the *Venire* it was, *ideo præceptum fuit* with an, &c. and so not certain, where the *Venue* issued, it was Error, *Stiles p. 195. Batsford and Yates.*

Trover brought in the time of Queen Elizabeth, and the Parties then at Issue, and *Venire fac.* returned. Afterwards in K. J. time an *Habeas Corpora* was awarded with a Tale, which recited *quod habeat Corpora Furator. summonit in Curia nuper Regina.* And because the Jurors were never said to be summoned in *Cur. Reginae*, (for the *Venire fac.* was the first Process, which is not any Summons.) It was held to be Error, nor aided by the Statutes; this Process cannot warrant this Tales as it ought to do, *Cro. Jac. p. 89. Sir Francis Knowles versus Beckingshaw.*

In Trover the Venue was *de Vicineto de Civitat. Coventry*, Its good. For so are all the Presidents of Cities except London, and no mention is made of the Parish or Ward. So it is *de Vicineto Eborum. Nov. Sarum, &c. Cro. Jac. p. 307. Clifton and Procter.*

Issue was upon Sale made by Covin at P. in *Com. H.* and the Trover was laid there. But the Defendant pleads, Bargain and Sale at K. in *Com. H.* in Marker. The Plaintiff replies, they were Stole from him at P. in *Com. H.* Its well tried in *H. vid. Cro. Jac. 510. Harding and Sheerman.* But I think the Case is misreported there.

If there are two Causes of Action in the Declaration, (*viz.*) One in one County, and the other in another County, and the *Affidavit* is of cause of Action (if any be) in one of them; yet this shall

ſhall not exclude the Plaintiff of his Election : As in Trover; If the Defendant becomes poſſeſſed in K. and he bought the Goods and ſold them in London, and the Plaintiff brings Action in London; here upon a common Affidavit for Kent, the Venire ſhall not be removed from London, Siderfin p. 405. Swaine's Caſe.

Affidavit to change a Venue in Trover.

*Def. in hac Narratione nominatus præſtitit Sacramentum ſuum quod Converſio bonorum & catallorum prædictorum in Narratione prædicta fieri ſuppoſit' mentionat' ſi quæ per ipſum fact. fuer. eadem fact. fuer. in Comit. Hunt. & non in London nec alibi extra Comit. Hunt.*

## C H A P. X.

*Of Evidence, Issue, Tryal.*

*Upon Not guilty, what may or must be given in Evidence. And what Evidence shall be good or not.*

**U**Pon Not guilty in Trover, The Defendant may give in Evidence, that the Goods were pawned to him for 10 l. or that he distrained them for Rent, or Damage Fesant, or that as Sheriff he levied them in Execution, or that he took them as Tithes severed, *Cro.Car.* 157. *Cro. Eliz.* 435. *Hob.* 187.

Citizens in London gave in Evidence, their Custom was to take Toll, *Jones* p. 240.

Upon the General Issue, the Defendant may give any thing in Evidence, which proves the Plaintiff hath no Cause of Action, or which doth Entitle the Defendant to the thing in Question. But if he have cause of justification (espécially in Trespass) or excuse it must be pleaded. As in Detinue. So in Battery, Trespals, Wast, 1 *Inst.* 283.

On Not guilty, the Defendant gave in Evidence a seisure for Goods Foreign bought and Foreign sold by the Custom of Lynn. *Per Hales* it is good, *Norfolk, Summer Assizes* 1668. *Harwich and Tweles.*

In



In this Action every thing which proves the Conversion Legal, may be given in Evidence upon the General Issue, *Jones Rep. 240. City of Colchester versus City of London.*

In Trover the matter of an Estray may be pleaded specially, or given in Evidence on Not guilty.

If the Defendant to an Action of Trover pleads Not guilty, the Plaintiff must prove the Property in the Goods.

If there be actual taking of the Goods given in Evidence, there needs no demand to be proved, *Siderfin p. 264. Bruen and Roe vid. supra.*

If the Count be of Trover, and the Jury find upon Bailment, yet its good. For the Conversion is the point of the Action, 12 *Jac. B. R. Isack and Clark.*

In Trover and Conversion; upon Not guilty the Evidence was, the Goods were taken and sold by vertue of the Commission of Sewers. *Per Rolls*, This matter might be well given in Evidence upon Not guilty pleaded, as detaining of Beasts in a Market for Toll, *Allen. Rep. 92. Combs and Cheney.*

Trover and Conversion brought by Demurrer Administrator. Upon Not guilty, The Defendant confesseth, the Conversion to his own use: But further saith, the Interest was indebted to the King, and that it was found by Inquisition, that he died possessed of the Goods in Question. And that a *vendition' exponas* was awarded to

K

the

the Sheriff, who by vertue thereof sells them to the Defendant. To prove this the Defendant shewed the Warrant of the Treasurer, and the Office Book of the *Exchequer*, and the Entry of the Inquisition, and the *venditioni exponas* in the Clerks Book. To which the Plaintiff saith, That the matter alledged is not sufficient to prove the Defendant Not guilty, and that there was no such Writ of *venditioni exponas*. The Defendant saith, the matter was sufficient, and there was such a Writ. It was resolved, He that Demurrs to the Evidence, ought to confess the whole matter of Fact to be true, and not to refer that to the Judgment of the Court; and if the matter of Fact be uncertainly alledged, or that it be doubtful whether it be true or not, because offered only to be proved by presumptions and probabilities, and the other party will Demur thereupon, he that alledgeth this matter cannot joyn in Demurrer with him, but ought to pray the Judgment of the Court, that he may not be admitted to his Demurrer, unless he will confess the matter of Fact to be true: And for that the Defendant did not so in this Case, both Parties have misbehaved themselves, And an *Alias Venire* awarded, *Allen Rep.* 18. *Wright and Paul Pindar.*

*Issue, Tryal.*

If the Count be of Trover, and the Jury find upon Bailment; yet its good; for the Conversion is the point of the Action, 2 Bulst. in *Isaack and Clark's* Case.

If the Property be not in the Plaintiff, the Defendant may be found Not guilty, 2 Keb. 44, 71. *Minors and Hogson. vid. supra.*

## C H A P. XI.

*Of Costs and Damages.*

Two Issues in several Counties in Trover. One is tried, and Execution for Costs and Damages; and after the other Issue is tried, and Costs given thereupon, the last is Erroneous as to the Costs, 1 *Brown*. p. 3. *Broccas's Case*.

The Plaintiff brought Trover as Administrator of Goods, of which the Testator was possessor, and which after his Death came to the Defendants possession, and he converted. *Per Cur.* Upon Non-suit he shall pay Costs, unless the Conversion were in the Testators Life time. And the possession by Law is in the Plaintiff by the Testators death, and he need not be named Administrator; and ruled that he pay Costs, 2 *Keb.* 738. *Lloid and Lance*. So it is in *Jones* 241. *Atkins and Head*, for that the wrong was done to the Plaintiff himself, the Defendant shall have Costs, *Cro. Car.* 219. *Mesme Case*.

In Trover for Goods. The Defendant pleads as to part, that the Plaintiff gave them to him at *D.* in *Com. H.* and as to other part *non cul.* and took Issue upon them; and it was found for the Plaintiff, by several Juries in several Counties, and Damages and Costs assessed by the Juries. Its Error in the whole, because both Juries have

have assessed Costs, and Judgment given accordingly, whereas the last Verdict ought to do it: And where two Juries are to try the Issue, the Form of Entry after the first Verdict is *Cessat Executio* until the other Issue be tried. Several Issues cannot sever the Costs, altho' they may the Damages, for it is but one Suit, therefore but one Costs. And that is the reason Judgment shall not be given until the last Issue be tried, because that Costs shall be but once assessed. And the first Jury may assess Costs for the whole Suit, 2 Leon. 177. *Sir John Sands and Pecksal Broccas.*

If the Writ of Enquiry of Damages vary from the Declaration upon Record, its Error, Cro. Jac. 294. *Cleydon and Taylor.*

Trover of 2000 Loads of Coles; on Joynt Tro Not guilty, The Defendants were found ver. Guilty severally for several Loads, and were found severally Not guilty for the residue, and judgment accordingly and intire Costs. It was assigned for Error, that several Damages ought not to have been assessed, it being a joynt Trover and Conversion. But *per Cur.* The Plaintiff shall have several Damages. The Conversion by them being severally found of several things, the Damages are well assessed severally, and he shall have Judgment against them severally according to the Verdict, Cro. Car. 54. *Player against Warn, and Dewes In Camer's Scaccar' vid. Sat. 23 Car. 2.c.9.*

## C H A P. XII.

## Of Judgment in Trover.

**I**N Trover, against the Defendant *scilicet cum A. and B.* after Verdict and Judgment *pro Querente*, Error was assigned, for that the Plaintiff had entred a *noli prosequi* against *A. and B.* *Sed non allocatur.* He may do so before Judgment at any time, this not being like a Release of one jointly sued, 3 *Keb.* 136. *Petch and Watts.*

Trover and Conversion against *A. and B.* *A.* pleads *non cul.* and found against him. *B.* pleads and Traverseth *absque hoc*, that he and *A.* converted, and that if sue is found for *B.* against the Plaintiff; yet the Plaintiff shall have Judgment against *A.* upon the first Verdict; for tho' the Declaration be, that they converted, &c. yet that shall be intended jointly and severally, *Noy p.* 144. *Peter and Gee versus Long.*

The Defendants plead Not guilty, and they are found Guilty severally, and several Damages assessed, and Judgment accordingly, and one *ideo in misericordia* against the Defendant, and one *ideo in misericordia* against the Plaintiff *pro falso clamore*; and good, *Cro. Car.* 54. *Players Case.*



At *Lanceſton* in *Cornwall*. In Trover the Judgment was *consideratum fuit*, whereas it ſhould be *consideratum eſt*. Per *Rolls*; it is a good exception upon the uncertainty of the words, *Stiles* p. 182. *Spry and Mill*, it was *recuperare debeat*, where it ought to be *recuperare debet*. Per *Rolls*, that is well enough in a Judgment upon *Nihil dicit*.

Judgment.

If there be two Issues in ſeveral Counties in Trover, and one is tried, and Judgment and Execution of the Coſts and Damages, and afterwards the other Issue is tried, and Coſts thereupon, the laſt is Erroneous, *Brownl. Rep.* 3.

Trover againſt Baron and Feme of the Trover of the Wife, and Conversion of the Wife during the Coverture. The Defendants pleaded Not guilty, Judgment was *quod querens recuperet* his Damages, and that the Defendant (the Wife) *ſit in miſericordia*. It ought to be the Baron and Feme *ſint in miſericordia*, becauſe the Baron pleads with the Wife, and doth not confeſs the Action; for that is the cauſe of the *Miſericordia*: So is the uſual courſe in Trefpaſs againſt Baron and Feme, for Trefpaſs done by the Feme during the Coverture, to have Judgment *ideo capiantur* againſt both, yet this is no offence by the Baron himſelf, *Cro. Jac.* p. 439. *Wood and his Wife againſt D. Suckling*.

In an Action against two for taking a Gun; one pleads Not guilty, the other justifies by a Gift of the Goods, and shews that the Plaintiff could not have cause of Action: Which is found for the Defendant. Tho' the other Defendant be found Guilty; yet no Judgment shall be against him, because it appears to the Court, that he had not any cause of Action, *Cro. Jac. 134. Markel and Alyiff.*

SELECT

SELECT  
PRESIDENTS  
OF  
**Declarations**  
AND  
PLEADINGS.

SELECT

PRESIDENTS

OF

Delaware

AND

PLEADINGS

SELECT  
PRESIDENTS  
OF  
DECLARATIONS  
AND  
PLEADINGS.

Declaration in Trover, in Communi  
Banco.

Trin. 20 Car. Secundi Regis Rot. 1223.

**E** P. nuper de, &c. Attachiat fuit  
ad respondend J. S. de placito  
quare cum idem J. primo die  
Aprilis Anno Regni Dom Regis nunc  
decimo septimo apud C. possessionat  
fuiſſet de diverſis averiis pretij viginti  
librarum ac de Bonis & Catallis ad  
Valentiam centum solidorum ut de A.  
veris

veriis Bonis & Catallis suis propriis  
 Et sic inde possessionat' existens averia  
 Bona & Catalla p̄ extra manus &  
 possessionem suas casualit' perdidit &  
 amisit Que quidem averia Bona &  
 Catalla postea apud C. p̄ ad manus  
 & possessionem p̄ C. p̄ inventionem debene-  
 runt p̄ tamen C. sciens averia Bona  
 & Catalla p̄dicta fore averia Bona &  
 Catalla p̄ J. propria & ad ipsum J.  
 de jure spectare & pertinere sed machi-  
 nans & fraudulent' intendens ipsum  
 J. de averiis Bonis & Catallis p̄  
 callide & subdole decipere & defraudare  
 averia Bona & Catalla p̄ licet sepius  
 requisitus fuisset eidem J. non delibe-  
 ravit sed averia Bona & Catalla p̄  
 postea scilicet primo die Aprilis Anno  
 Regni dicti Dom̄ Regis nunc decimo  
 nono apud C. p̄ in usum suum pro-  
 prium convertit & disposuit ad damnum  
 ipsius J. quadragint' librarum; &c. Et  
 unde idem J. per W. B. Attornat' suum  
 queritur quare cum idem J. primo die  
 Aprilis Anno Regni Dom̄ Regis nunc  
 decimo septimo apud C. possessionat'  
 fuisset de diversis averiis (videlicet) de  
 uno Bove Anglice (an Ox) & duabus  
 Vaccis pretij, &c. ac de Bonis & Ca-  
 tallis videlicet quadragint' careat' seni  
 ad valentiam, &c. ut de averiis Bonis  
 & Catallis suis propriis Et sic inde  
 possessionat' existens averia Bona &  
 Catalla p̄ extra manus & posses-  
 sionem suas casualit' amisit Que  
 quidem



quidem averia Bona & Catalla postea  
apud C. p̄s ad manus & possessionem  
p̄s C. per inventionem debenerunt p̄s  
tamen C. sciens averia Bona & Catalla  
p̄s fore averia Bona & Catalla ipsius  
J. propria & ad ipsum J. de jure  
spectare & pertinere sed machinans &  
scadulene intendens ipsum J. de ave-  
riis Bonis & Catallis p̄s callide &  
subdole decipere & defraudare averia  
Bona & Catalla p̄s licet sepius re-  
quisitus fuisset eidem J. non delibera-  
bit sed averia Bona & Catalla pre-  
dicta postea scilicet 1 die Aprilis An-  
no Domi Regis nunc decimo nono  
apud C. p̄s in usum suum proprium  
convertit & disposuit ad damnum ipsi-  
us J. quadragine librarum Et inde  
produc sextam,

## A Declaration in Trover in Banco Regis.

**R**. B. querit de W. S. in custodia  
 Mare, &c. pro eo videlicet quod cum  
 p̄s R. tali die & anno apud B. in Com  
 p̄s possessionae fuisset de uno poculo  
 argenteo ad valentiam vigine libra-  
 rum ut de Bonis & Catallis suis pro-  
 priis Et sic possessionae existens idem  
 R. die & anno supradictis apud B.  
 p̄s in Com p̄s Bona & Catalla illa ex-  
 tra manus & possessionem suas calua-  
 lit' perdidit & amisit que quidem Bona  
 & Catalla postea scilicet primo die  
 Julij Anno 31 supradict' apud B. p̄s  
 in Com p̄s ad manus & possessionem pre-  
 dict' W. S. per inventionem debene-  
 runt p̄s tamen Def. sciens Bona &  
 Catalla predicta fore Bona & Catalla  
 p̄s R. & ad ipsum R. de jure spectare  
 & pertinere machinans tamen & fraudu-  
 lene intendens p̄s R. in hac parte callide  
 & subdole decipere & defraudare Bona  
 & Catalla illa postea scilicet vicesimo  
 die Aprilis Anno Regni, &c. supradict'  
 apud B. p̄s in Com p̄s ad ulum &  
 commodum suum proprium convertit &  
 disposuit ad damnum ipsius R. vigine  
 librarum & inde produc' sextam,

The Form of a Declaration in Trover for  
a Bag and ready Money therein in B.C.

ff. **Q**uare cum idem S. possessionat' fuisset de una бага de corio ad balenciam sex denar' & de cene libris in pecuniis numeratis in eadem бага contene ut de бага & cene libris ipsius S. propriis Et sic inde possessionat' existend idem S. eandem bagam & eadem centum libras in eadem бага contene extra manus & possessionem suas casualie perdidit & amisit Que quidem бага & centum libze in eadem бага contene postea apud—ad manus & possessionem p̄d C. per invencond' debenerunt p̄d tamen C. sciens eandem bagam & p̄d centum libras in eadem бага contene fore bagam & centum libras ipsius S. proprias & ad ipsum S. de jure spectare & pertinere ac machinans ipsum S. de eadem бага & p̄d centum libris in eadem бага contene callide decipere & defraudare eandem bagam & p̄d centum libras in eadem бага contentas postea apud—p̄d in usum suum proprium disposuit & convertit ad damnum ipsius S. 200 l. &c. Et unde idem S. per A. B. Attornat' suum queritur quare cum idem S. primo die Junij Anno Regni, &c. apud &c. possessionat' fuisset de una бага, &c.

The

The Form of a Declaration of Trover for a Bond, wherein three stood bound to two, one of the Obligees being Dead, against an Attorney in B. C.

**R.** **W.** per Attorn<sup>m</sup> suum quer<sup>r</sup> de R. E. un<sup>d</sup> Attorn<sup>m</sup> Cui Dom<sup>us</sup> Regis de Banco hic presente hic in curia in propria persona sua pro eo videlicet quod cum idem R. (tali die & anno) apud L. possessionar<sup>us</sup> fuisset de quodam scripto obligatorio de summa 400 l. ut de scripto obligatorio suo proprio in quo quidem scripto quidam S. de, &c. M. S. de eadem Civitate mcer & C. S. de eadem Civitate, &c. conjunctim & divisim fessissent obligat<sup>us</sup> eidem R. & cuidam G. E. jam defuncte quem idem R. W. supervixit in p<sup>re</sup> 400 l. solvendum eidem R. & G. ad certum diem preterite in eodem scripto content<sup>us</sup>. Et sic inde possessionar<sup>us</sup> existend<sup>us</sup> ac p<sup>re</sup> 400 l. eidem R. W. minime solus idem R. W. scriptum obligatorium illud extra manus & possession<sup>em</sup> suas casualiter amisit quod quidem scriptum obligatorium postea scilicet eisdem die & anno apud L. p<sup>re</sup> in paroch<sup>ia</sup> & Warda p<sup>re</sup> p<sup>re</sup> 400 l. eidem R. W. minime solut<sup>us</sup> ad manus & possession<sup>em</sup> p<sup>re</sup> R. E. p<sup>er</sup> inventionem devenit p<sup>re</sup> tamen R. E. sciens scriptum obligatorium p<sup>re</sup> fore scriptum obligator<sup>is</sup> ipsius R. W. proprium & ad ipsum R. W. de jure pertinere

pertinere & spectare ac machinans & fraudulens intendens ipsum R. C. de scripto illo ac de perceptione p<sup>d</sup> 405 l. in eodem contene callide decipere & defraudare licet postea scilicet—die—Anno—apud L. p<sup>d</sup> in paroch' & Warda p<sup>d</sup> sepius requisit fuisse scriptum obligatorium p<sup>d</sup> eidem R. C. non deliberabit sed scriptum obligatorium illud postea scilicet eisdem die & anno apud L. p<sup>d</sup> in paroch' & Warda p<sup>d</sup> ad usum suum proprium convertit & disposuit ad damnum ipsius R. C. 500 l. Et inde, &c.

Declaration for Moneys lost by the Wife  
at a Game at Cards called Noddy.

¶ **T** S. queritur de R. R. in custodia Marti, &c. pro eo videlicet quod cum idem T. primo die Decembris Anno, &c. possessionar fuisse de centum libris in pecuniis numeratis in auro ut de denariis suis propriis tunc existent & remanent in manibus & custodia M. tunc uxor ipsius T. p<sup>d</sup> R. R. sciens p<sup>d</sup> centum libras in manibus & custodia ipsius M. existere & existens communis Usor cum falsis aleis & cartis pictis ac Machinans eandem vel magham partem inde per falsas & deceptivas vias in manibus & possessione suis extra custodiam ipsius M. acquirere & habere nec non eundem T.

¶

inde

inde subdole decipere & defraudare ac  
 credens ipsum P. T. pejorare & statum  
 suum penitus destruere p̄o primo die  
 Decemb̄is Anno, &c. apud A. &c. in  
 absentia ipsius T. illicite incitabit  
 sollicitabit & procurabit eandem M.  
 adtunc & ibid̄ ludere cum eodem A.  
 ad cartas pictas ad quendam ludum  
 illicitum super eisdem Cartis pictis  
 Anglice at Noddy, pro denar̄ ipsius  
 T. in absentia & sine consensu ipsius  
 T. ad quem quidem Ludum idem A.  
 adtunc & ibidem illicite & fraudulent̄  
 per deceptivam viam & medium Lu-  
 dendi & decipiendi eandem M. acqui-  
 sivit & Lucratus fuit extra manus &  
 custodiam ipsius M. quadragine libras  
 in pecuniis numeratis in auro parces  
 predictarum centum librarum de dena-  
 riis ipsius T. & eandem quadragine  
 libras ad usum & commodum suum  
 proprium adtunc & ibidem disposuit  
 & convertit ad damnum ipsius T.  
 10 l. &c.



Declaration by an Executor for Goods,  
which came to the Defendants Hands,  
after the Death of the Testator in  
B. C.

**J**ohannes Smith nuper de W. in  
Com. pꝛed' Innholder Attach  
fuit ad respondend' S. H. Executor  
Testamenti Josie H. de placito quare  
rum pꝛo Josias in vita sua possessio-  
nae fuisset de diversis Bonis & Ca-  
tallis ad valentiam sex Librarum ut  
de Bonis & Catallis suis propriis.  
Et sic inde possessionae existens idem  
Josias sexto decimo die Augusti Anno  
Regni Domini Regis nunc duodeci-  
mo apud W. pꝛed' condidit Testamen-  
tum & ultimam voluntatem sua in  
scriptis & per eandem constituit &  
ordinavit eundem S. fore Executor-  
em Testamenti sui pꝛo Et postea scilicet  
septimo die Septembris Anno  
Regni dicti Domini Regis nunc duo-  
decimo supradict' apud W. pꝛo obiit de  
eisdem Bonis & Catallis possessionae  
post cujus mortem scilicet 9 die Octo-  
bris Anno Regni dicti Domini Regis  
nunc quarto decimo pꝛo apud W. pꝛo  
Bona & Catalla predicta ad manus  
& possessionem pꝛo Johannis per in-  
ventionem debenerunt pꝛo tamen Jo-  
hannes sciens Bona & Catalla predicta  
fore Bona & Catalla ipsius Sa-  
muelis

muellis propria & ad eundem S. ratione Executionis Testamenti predicti de jure spectare & pertinere ac Machinans & intendens eundem S. de Bonis & Catallis p̄s decipere & defraudare postea scilicet eodem nono die Octobris Anno quarto decimo supradicto apud W. p̄s Bona & Catalla p̄s in usum & commodum ipsius Johannis proprium convertit & disposuit ad damnum ipsius S. quadragine librarum Et in retardationem Executionis Testamenti p̄d, &c. Et unde idem S. per W. B. Attornae suum queritur quare cum p̄s Josias in vita sua possessionae fuit de diversis Bonis & Catallis videlicet de duodecim cochleis argenteis ad valentiam, &c. ut de Bonis & Catallis suis propriis, &c. Et sic inde &c. (ut supra verbatim usque) ac in retardationem Executionis Testamenti p̄s Et inde producit lectam, &c. Et profert hic in Curia literas Testamentarias p̄d Josie per quas satis liquet Curie hic ipsum S. fore Executorem Testamenti predicti Et inde habere Administrationem, &c.

Declaration by a Man and his Wife, she being Executrix to the Testator, in whose Life the Goods came to the Defendants Hands in C. B.

Sur. **A** B. nuper de, &c. Attachiat' fuit ad respondend' H. J. & Jane ux' ejus Executrici Testamenti Andree C. de placito quare cum p'd Andreas in vita sua scilicet (tali die & anno, apud, &c.) possessionae fuisset de diversis Bonis & Catallis ad valentiam p'd ut de Bonis & Catallis suis propriis Et sic inde possessionae existend' idem Andreas in vita sua Bona & Catalla predicta extra manus & possession' suas casualiter amisit que quidem Bona & Catalla postea scilicet tali die & anno apud R. p'd in vita p'd Andree ad manus & possession' ipsius Anne per Inventionem deveniunt predicta tamen Anna sciens Bona & Catalla p'd fuisse Bona & Catalla que fuer' p'd Andree in vita sua & ad prefat' Janam post mortem p'd Andree (dum ipsa sola fuit) nec non ad p'd H. & Janam post desponsalia inter eos celebrat' de jure spectare & pertinere ac Machinans prefatos Henricum & Janam post mortem p'd Andree de Bonis & Catallis predict' decipere & defraudare Bona & Catalla predicta eidem Jane post mortem

I 3

tem

tem predictæ Andree (dum ipsa sola fuit) seu eidem H. & Jane post dispensalia inter ipsos celebrata licet ad hoc faciend' per prefat' H. & Janam post mortem p̄d' Andree tali die & Anno apud, &c. licet requisie non deliberabit sed Bona & Catalla illa postea die anno & loco in usum proprium convertit & disposuit in retardationem Executionis Testamenti, &c. ut proxime supra verbatim usque ad finem.

Declaration by an Administratrix for Goods, which were in her Possession after the Testators death, C.B.

II. **W** A. nuper de, &c. Miles & C. R. nuper de, &c. Gen. Attachiat' fuer' ad respondend' A. U. vid' Administrat' Bonorum & Catallorum que fuer' J. T. qui obiit intestat, &c. de placito quare cum eadem Anna post mortem p̄d' J. scilicet tali die & anno apud B. ratione Commissionis Administrationis p̄d' possessionae fuit de quibusdam averiis pretii cene librarum ac de Catallis ad valentiam Cl. ut de averiis & Catallis que fuer' p̄d' Johannis tempore mortis sue Et sic inde possessionae existens averia Bona & Catalla predicta extra manus & possessionem p̄d' Anne casualiter perdidit & amisit Que quidem averia Bona &

& Catalla postea apud B. p̄s ad manus & possessionē p̄ed' W. & E. per inventionē debener' p̄edia' tamen W. & E. scientes averia & Catalla p̄dicta fore averia & Catalla que fuerē p̄s J. tempore mortis sue & ad ipsam Annam ratione Commissionis Administrationis p̄ed' de jure spectare & pertinere sed machinantes & fraudulentē intendentes eandem Annam in hac parte callide & subdole decipere & defraudare averia Bona & Catalla p̄s licet sepius requisit' fuissent eidem Jane non deliberaver' sed averia Bona & Catalla illa postea scilicet (tali die & anno) apud B. p̄s in usum suum proprium converter' & disposuer' in Retardationem Administrationis Bonorum & Catallozum p̄s ad dampnum ipsius Anne 300 l. &c. Et unde eadem Anna (cui Administratio omnium & Bonorum & Catallozum que fuer' p̄s Johannis tempore mortis sue per R. providentia divina Cantuariensis Archiepisc' quarto die Maij Anno Domini millesimo sexcentesimo & decimo apud L. poch beate Marie de Arcubus in Warda de Cheap post mortem p̄s Johannis Commissa fuit) per W. R. Attornae suum queritur quare cum eadem Anna post mortem p̄s, &c. ut supra, usque in Retardationem Administrationis Bonorum & Catallozum p̄ed' ad dampnum ipsius Annæ 300 l. Et inde producit lectam, &c. Et profert hic in



Curia Literas Administratozias p̄  
 Archiepiscopi p̄dictamq; Commission  
 Administrationis p̄dictae in forma p̄  
 quarum hac est die & anno supradict,  
 &c.

Declaration by an Executor in B. R.

**N.** **I** B. Ar' Executor, &c. Petri T.  
 Ar' defuncti queritur de T. T.  
 Armigero in custodia mari, &c. pro eo  
 videlicet qd' cum p̄d' P. in vita sua  
 scilicet primo die Februarij Anno Dom'  
 1649, apud Westm' in Com' Midd.  
 possessionat' fuit de xx bobus p̄etii  
 centum librarum ut de Bonis &  
 Catallis suis p̄p̄is Et idem P. in  
 vita sua sic inde possessionae existens  
 postea scilicet vicesimo sexto die Maij  
 Anno Dom' 1650, apud W. p̄d' in  
 Comie p̄d' condidit Testamentum &  
 ultimam voluntatem sua & per eadem  
 constituit & ordinavit p̄fate J. B.  
 Executozem eorundem Et postea ibidem  
 de Bonis & Catallis p̄d' possessionat'  
 fuit que quidem Bona & Catalla postea  
 scilicet ultimo die Maij Anno ultimo  
 supradict' extra manus & possessionem  
 suas casualit' amisit que quidem Bona  
 & Catalla postea scilicet ultimo die  
 Maij Anno Dom' 1650, supradicto apud  
 W. p̄d' in Comie p̄d' ad manus  
 & possessionem p̄d' S. per inventionem  
 p̄benerunt p̄d' tamen T. sciens  
 Bona



Bona & Catalla pꝛed' foꝛe Bona & Catalla pꝛed' P. & ad iplum P. de jure ſpectare & pertinere machinans tamen & fraudulente intendens non ſolum pꝛefac' P. in vita ſua ſet etiam pꝛefac' quer' poſt iplius P. moꝛtem in hac parte callide & ſubdole decipere & defraudare Bona & Catalla pꝛed' licet ſepius requiſiſſe, &c. pꝛefac' P. in vita ſua ſeu eidem J. poſt ejus moꝛtem non delibera- vit ſed eodem Bona & Catalla poſtea ſcilicet 1. die Apr. A. D. 1645. apud W. pꝛd' in Com. pꝛd' ad uſum ſuum pꝛopꝛium convertit & diſpoſuit in retardatione debite Executionis Teſtamenti ejusdem Petri ad damnum, &c. Et pꝛofert hic in Cur' Literas Teſtamentari pꝛd' P. per quas ſatis liquet curie dicti Dom' Regis nunc hic iplum J. foꝛe Executoꝛem Teſtamenti pꝛd' & inde habere Admiſtrationem, &c.

Declara

## Declaration by an Administrator in B. R.

ff. — **P**ro ea videlt qđ cum pđ J. in  
vita sua apud G. possessione  
nar fuisset de una vacca & uno porco  
pretij 10 l. ut de averiis suis propri-  
is Et sic inde possessione existend  
apud G. pđ de eisdem Averiiis obiit  
possessione intestae post cujus mortem  
Administratio, &c. eidem &c. commissa  
fuit ac averia pđicta post mortem pđ  
J. ad manus & possessionem pđ (Defen-  
dent) per inventionem debener' idem  
(Defendens) sciens averia pđ fuisse ave-  
ria pđ J. propria in vita sua ac tem-  
pore mortis sue & ad ipsum quer' post  
mortem ipsius virtute pđ Commission  
Administration de jure spectare &  
pertinere ac machinans, &c. ipsum Ad-  
ministratorem de averiis illis, &c. de-  
fraudare, averia illa, &c. non delibera-  
vit, &c. set, &c. ad usum suum proprium  
convertit & disposuit in Retardatione  
Administrationis Bonorum & Catal-  
lorum ad damnum ipsius quer' 20 l.

Decla-

Declaration by an Administor in B.R.  
against Two.

**N** S. & J. ur' ejus Administr' om-  
nium, &c. que fuer' T. N. nuper  
defuncti tempore mortis sue qui obiit  
intestae ut dicitur queruntur de J. D.  
& O. D. in custodia marr', &c. pro eo  
videlicet quod cum p̄s T. N. in vita sua  
scilicet tali die & anno apud H. in  
Com p̄s possessionae fuit de Bonis &  
Catallis sequen' videlicet de, &c. ut de  
Bonis & Catallis suis propriis Et  
sic inde possessionae existen' idem T. N.  
postea scilicet eodem die & anno, &c.  
supradice apud H. p̄s in Com p̄s obiit  
inde possessionae habens dum vixit &  
tempore mortis sue diversa bona jura &  
credita notabilia in diversis diocesibus  
sue peculiar' jurisdictionibus ratione  
cujus Commission' Administrationis  
omnium, &c. que fuer' p̄s T. N. ad re-  
verendissimum in Christo patrem Jo-  
hannem providentia divina Cantuar'  
Archiepiscopu totius Anglie Primae  
& Metropolitani pertinebat & spectabat  
qui quidem reverendissimus Pater post  
mortem ipsius T. N. Administrae om-  
nium, &c. que fuer' p̄s T. N. tempore  
mortis sue (tali die & anno) apud p̄dia'  
S. & J. sorori natural' & legitim' comisit  
racone cuius S. & J. inter alia possessio-  
ae fuere de Bonis & Catallis p̄s que qui-  
dem Bona & Catalla p̄s quer' postea scili-  
cet eodem die, &c. Anno, &c. supradico  
apud

apud H. pñ in Com pñ extra manus  
 & possessionem suas casualie perdidit  
 & amiser' posteaque scilicet eodem die,  
 Ec. Anno, Ec. supradice apud H. pñ in  
 Com pñ Bona & Catalla illa ad  
 manus & possessionem ipsorum (Def.) per  
 inventionem debener' pñ tamen (Def.)  
 sciens Bona & Catalla pñ fore Bona  
 & Catalla ipsius T. N. propria dum  
 ipse vixit & ad ipsos (quer') post mortem  
 pñ J. N. virtute Administrationis pñ  
 de iure spectare & pertinere machinan  
 & fraudulenter intendit ipsos (quer') de  
 Bonis & Catallis pñ callide & deceptibe  
 decipere & defraudare Bona & Catalla  
 pñ seu aliquam inde percet pñ (quer')  
 licet per eosdem (quer') pñ (Def.) se-  
 pius requisit fuissent) non deliberave-  
 runt nec eorum alter deliberabit set  
 Bona & Catalla illa postea scilicet  
 die, Ec. Anno, Ec. apud H. pñ in usum  
 & commodum suum proprium con-  
 vertet & disposuer' ad damnum, Ec.  
 Et inde produc' sectam, Ec. Et pro-  
 fert, Ec.

Decla-

## Declaratio in Cur. inferiori.

ff.—**Q**uare cum idem (quer') tali die & anno apud B. ac infra jurisdictionem huius Curie possessione fuisset de diversis Bonis videlicet una vacca, &c. ab Valentiam 10 l. ut de bonis suis propriis Et sic inde possessione existens eisdem die & anno apud B. p'd' ac infra jurisdictionem p'd' idem (quer') bona p'd' extra manus & possessionem suas casualiter amisit que quidem bona postea scilicet eisdem die & anno apud B. p'd' ac infra jurisdictionem p'd' ad manus & possessionem p'd' (Def.) per inventionem debenerunt p'd' tamen (Def.) sciens bona p'd' fore bona ipsius (quer') propria & ad ipsum quer' de jure spectare & pertinere fraudulenter tamen intendens ipsum (quer') in hac parte defraudare bona p'd' eidem quer' licet postea scilicet (tali die & anno) supradicta apud B. p'd' ac infra jurisdictionem p'd' per eundem quer' requisitus fuisset non deliberabit sed bona p'dicta scilicet eisdem die & anno ultimo mentione apud B. p'd' ac infra jurisdictionem p'd' in usum suum proprium convertit & disposuit ad damnum ipsius quer' 20 l. Et inde producat sec.

## Custom of Market overt.

ff. **A**ctio non, quia Protestando qđ  
 Bona & Catalla pđicta non  
 fuer tantı valoris quanti in Narrati-  
 one pđ specificae pro placito idem J.  
 die qđ Civitas London est antiqua  
 Civitas quodq; infra eandem civita-  
 tem habetur & a tempore cujus contra-  
 rij memoria hominum non existit ha-  
 bebar communı mercae tam pro cibibus  
 ejusdem Civitatis quam pro omnibus  
 aliis personis quibuscunque ad emendı  
 & vendendı omnes & singulas res &  
 Merchandisas in omnibus locis &  
 shopis publicis & apertis infra ean-  
 dem Civitatem & libertate ejusdem quo-  
 libet die qualibet septimana Anni (di-  
 ebus dominicis & festivalibus tantum-  
 modo exceptis) ab ortu solis usque ad  
 ejus occasum dummodo una pars con-  
 trahens sit liber homo ejusdem Civi-  
 tatis Et ulterius idem J. die quod  
 ante pđ tempus quo supponitur con-  
 vercon bonorum in Narratione pđ  
 specificae scilicet octavo die Aprilis Anno  
 Domı 1660 idem J. fuit & adhuc est  
 liber homo ejusdem Civitatis videlicet artis  
 sive misterij, &c. quodque quedam M.  
 B. Possessionae fuit de 16 Libras pon--  
 derı Serici in Narratione pđ superius  
 spec apud London pđ in paroch & war-  
 da pđ & sic inde possessionae existen-  
 cadem



eadem M. eodem octavo die Apr̃i Anñi,  
 Et. non existens die Dominico aut die  
 festivali post ortum solis & ante occa-  
 sum solis ejusdem diei apud Londoñ  
 p̃d in parochia & Warda p̃d in pleno  
 mercatu ibid̃ videlicet in exteriori parte  
 tunc publice & aperte Shope cuiusdem  
 T. J. vocat le Stall versus viam regiam  
 in parochia & Warda p̃d in qua Shopa  
 p̃d T. ante p̃d tempus quo supponitur  
 convercon serici p̃d in Pari p̃d spec̃  
 & p̃d tempore quo Maria possessionae  
 fuit de serico p̃d scilicet p̃d octavo die  
 Apr̃ilis Anno supradicti & semper po-  
 stea omnia genera serici emere &  
 vendere usus fuit & adtunc utitur & in  
 qua shopa p̃d T. p̃d octavo die Apr̃ilis &  
 semper postea hucusque artem sericarij  
 (Anglice a Silkman) exercuit & usus  
 fuit & adhuc exercet & utitur p̃d 16  
 librar̃ ponder̃ serici p̃d tunc & ibidem  
 existend̃ tunc & ibidem vendidit & deli-  
 beravit eidem J. tunc & adhuc libero  
 homine Civitae p̃d existend̃ pro certa  
 pecunie summa iñ eos concordae pre-  
 fac̃ M. B. per prefat̃ J. adtunc & ibi-  
 dem solur per quod idem J. pred̃ 16  
 librar̃ ponder̃ serici predicto tempore quo  
 supponitur Conversio & in usum &  
 commodum suum proprium convertit &  
 disposuit prout ei bene licuit Et hoc, &c.  
 unde, &c.

Plea,

Plea, That the Plaintiff Licensed a Stranger to Pawn the Goods and Chattels, for Security of Money borrowed there-upon.

**A** Etio non quia dicit qd' pd' S. Possessionae fuit de Bonis & Catallis pd' ut de Bonis & Catallis suis propriis & si cinde Possessionae existen' (tali die & anno) apud L. pd', &c. Bona & Catalla pdicta deliberabit quibusdam E. & M. eisdem E. & M. Licenciando & authorizando quod eodem E. & M. pro vera & secura solucōne cujusdam pecuniarum summe quam ille vel eorum altera ab aliquibus mutuari contingere fiend' ad diem & dies inter eos concordae impignozare potuerunt Et idem J. dicit quod pd' E. & M. de Bonis & Catallis pd' Possessionae existend' postea scilicet (tali die & anno) apud L. &c. mutuae fuissent de prefate J. 15 l. & 7 s. resolvend' eidem J. in festo S. M. tunc proxim sequend' & pred' E. & M. pro securitate soluc' pd' 15 l. & 7 s. apud L. pd' in Paroch, &c. Bona & Catalla pd' eidem J. impignozaverunt quorum premissorum pretextu Bona & Catalla predia ad manus & Possessionem ipsius J. debener' & pd' 15 l. 7 s. eidem J. adhuc minime solue existunt Et ulterius idem J. dicit qd' ipse semper a pdia' die, &c. anno, &c. supra

supradicto paratus fuit & paratus ext-  
sit ad deliberand' Bona & Catalla pd'  
& ill. parat' hic in Curia p'ofert si pd'  
C. & M. vel eorum altera pd' 15 l. 7 s.  
solvere voluerint Et hor, &c. unde, &c.  
Replicae. Precludi non debet quia di-  
cit qd' ipse idem S. non Licentiabit pd'  
C. & M. Bona & Catalla pd' impig-  
nare modo & forma prout pd' J. su-  
perius plitando allegabit & hor perit, &c.

Statute of Limitations pleaded at  
Large.

It. **A**ctio non, &c. quia dicit qd' per  
quendam actum in Parlia-  
mento Dom' Jacobi nuper Regis  
Anglie decimo nono die februarii An-  
Regni sui 21 apud Westm' in Comite  
Midd' tunc edic' inter alia inactitae  
fuit auctoritate ejusdem Parliamenti  
qd' omnes Actiones Transgress' quae  
clausum fregit omnes Actiones Trans-  
gress' Detentionis Actiones sur Trover  
& Repleg' & p'p' cap'one bonorum &  
averiorum omnes Actiones Compd'  
super cas' al' quam Tales Compd' qui  
concernunt artem Merchandizandi in-  
ter Mercat' & Mercat' vel eorum  
Factores vel serbient omnes Actiones  
deb' & arrearag' redditus & omnes  
Actiones insule minacois verbera-  
ron' & vulnerae & Imp'isonamenti vel  
alique eorumdem que forent secutae vel  
impe-

impetrat ad aliquod tempus post finem  
ejusdem Sessionis Parliamenti forent  
commenciat & lectat vel impetrat ad  
aliquod tempus post finem ejusdem Ses-  
sionis Parliamenti forent commenciat  
& inde lectat infra tempus & Limita-  
tionem postea in eodem actu expressat &  
non postea (videlicet) p<sup>ro</sup> Actiones super  
cas' alias quam p<sup>ro</sup> scandalosis verbis  
& p<sup>ro</sup> Actiones p<sup>ro</sup> compo & p<sup>ro</sup> Actiones  
p<sup>ro</sup> Transg<sup>re</sup> debi detencionis & repleg<sup>re</sup>  
p<sup>ro</sup> bonis & averiis & p<sup>ro</sup> Actiones quare  
clum fregit infra tres annos p<sup>ro</sup>or'  
post finem ejusdem Sessionis Parlia-  
menti vel infra sex annos p<sup>ro</sup>or' post cau-  
sam earundem actionum vel lege &  
non postea & p<sup>ro</sup>ed' Actiones Transg<sup>re</sup>  
insule verberacionis vulneracionis &  
Imprisonamenti vel aliqua earundem  
infra unum Annu p<sup>ro</sup>or' post finem  
ejusdem Sessionis Parliamenti vel in-  
fra 4 annos p<sup>ro</sup>or' post causam talium  
actionum vel lege & non postea & p<sup>ro</sup>  
accones super ealium p<sup>ro</sup> verbis infra  
unum Annu p<sup>ro</sup>or' post finem p<sup>ro</sup> Ses-  
sionis Parliamenti vel infra duos Annos  
p<sup>ro</sup>or' post verba p<sup>ro</sup>palat & non postea  
p<sup>ro</sup>uit per eundem actum plenius ap-  
paret Idemque G. ulterius dicit qd p<sup>ro</sup>  
Session p<sup>ro</sup> Parliamenti finivit 29 die  
Maij Anno Regni dicti Dom<sup>ini</sup> Regis  
Anglie, &c. quodq; Conversio, &c. in  
Narratione p<sup>ro</sup> superius fieri supposie  
face fuit 30 die Martij An<sup>no</sup> Dom<sup>ini</sup> 1654,  
qdque p<sup>ro</sup> S. & W. villam suam p<sup>re</sup>-  
dictam

dictam 23 die Octobris Anno Regni  
Domini Regis nunc 13 primo exhibuere  
que quidem billa in forma predicta ex-  
hibita non exhibita fuit intra tres An-  
nos pro' post finem pd Sessionis Parlia-  
menti nec intra sex Annos pro' post  
causam accanis vel sece pd secundum  
Stat' pd. Et hoc, &c. unde, &c.

Plea, That the Defendant bought the  
Goods in open Market.

**E**T pd R. B. Gire & W. B. per J.  
R. Attornae suum ven & defendi  
viam & injuriam quando, &c. Et dicunt  
qd pd R. S. accorem suam qd inde  
verlus eos habere seu manutenere non  
debet Quia dicit qd infra Paroch S.  
M. Westm in pd Com Midd est & a  
tempore cujus contrarij memoria ho-  
minū non existit fuit quoddam mercat  
tene super quemlibet diem Martis  
Septimanatim & singulis Septimanis  
a toto tempore supradicto pro empcion  
& vendition omnium & omnimod ave-  
riorum Bonorum & Catallorum mer-  
cimon & Merchandizarum Quodque diu  
ante tempus pd quo supponitur Con-  
versionem averiorum Bonorum & Ca-  
tallorum pd fieri quidam R. B. Pos-  
tessionatus fuisset de averiis Bonis &  
Catallis predictis in Narratione ipsi-  
us R. S. superius mentonae quodque  
pd R. B. postea ante pd tempus quo  
super



super diem Martis 22 diem Maij Anno  
Regni dicti Dom Regis nunc decimo  
octavo supradice apud mercatum pñ  
infra Paroch St. Margarete Westm  
in Com in aperto mercatu videlicet in-  
ter horam decimam ante meridiem &  
horam secundam post meridiem ejul-  
dem diei vendidit pñd' Aberia Bona  
& Catalla pñd' R. H. & W. H. per  
qd iidem R. H. & W. H. postea scili-  
cet pñd' Ec. pñd' Aberia Bona &  
Catalla ad usum ipsor R. H. & W.  
H. proprium converterunt & disposu-  
erunt prout eis bene licuit Et hoc  
parati sunt verificare unde per judi-  
cium si pñd' R. S. actionem suam  
pñd' inde versus eos habere seu  
manutenere debeat, Ec. Replicat qd  
non vendidit modo & forma, Ec.

Plea



Plea per Attornat' al' part viz. Eleven  
 Sheep Not Guilty. To the residue he  
 pleads other Action in Bar, and Reco-  
 very upon it.

**E**T p<sup>r</sup> J. B. in propria persona  
 sua venit & def. vim & injuri-  
 am, &c. Et idem J. B. dicit q<sup>d</sup> ipse in  
 nullo est culpabilis de Conversione un-  
 decim obium de p<sup>r</sup> centum obibus p<sup>r</sup>o-  
 ut p<sup>r</sup> J. A. superius verlus eum que-  
 ritur. Et de hoc ponit se super patriam  
 & p<sup>r</sup> J. S. similiter. Et quoad Conver-  
 sionem resid<sup>uo</sup> p<sup>r</sup> centum obium superius  
 fieri supposit<sup>o</sup> idem J. B. dicit q<sup>d</sup>  
 Actio non, &c. quia dicit q<sup>d</sup> ante p<sup>r</sup>  
 diem exhibitionis bille p<sup>r</sup> videlicet  
 (tali die & anno) p<sup>r</sup> J. A. p<sup>r</sup> nomen J. <sup>Original</sup>  
 T. gener<sup>is</sup> prosecutus fuisset extra curiam <sup>sur ceo.</sup>  
 Cancellarie dicti Dom<sup>ini</sup> Regis ( eadem  
 Cancellaria apud Westm<sup>onasterium</sup> in Com<sup>itatu</sup>  
 Midd<sup>sex</sup> tunc exist<sup>ens</sup>) quoddam breve  
 originale ejusdem Dom<sup>ini</sup> Regis verlus  
 ipsum J. B. & quendam Brianum S.  
 per nomen J. B. nuper de Grisby in  
 Com<sup>itatu</sup> p<sup>r</sup> Gen<sup>eralem</sup> & Brianum S. nuper de  
 H. in Com<sup>itatu</sup> p<sup>r</sup> Junioris Beom<sup>onasterium</sup> tunc  
 Die p<sup>r</sup> Com<sup>itatu</sup> Lincoln<sup>ie</sup> directum per q<sup>uod</sup>  
 quidem breve idem dominus Rex nunc  
 eidem tunc Die Lincoln<sup>ie</sup> precepit q<sup>uod</sup>  
 si predict<sup>us</sup> J. A. fecisset ipsum tunc Die  
 securum de Clameo suo prosequend<sup>um</sup>  
 tunc idem Die poneret per vad<sup>um</sup> &  
 salvos

salvos pleg' pō J. B. & B. S. qđ el-  
sent coram Iusticiariis dñi Dom  
Regis hic senket apud Westm. pō in  
Octabis J. Mich. tunc pōt' sequen-  
dum ostend' quare vi & armis centum obes  
ipsius J. L. precij sexagine librarum  
apud Westkandal invene ceperunt & ab-  
duxerunt & Bona & Catalla ipsius J.  
ad valent centum solidorum ibidem vi-  
per invene ceperunt & asportaverunt.  
Et alia enornia intulerunt ad grave  
damm' ipsius J. & cont' pacem Dom  
Regis hunc. Et qđ idem tunc Dic  
haberet tunc hic nomina pleg' & hoc  
breve. Ad quoniam dñi coram H. B.  
hic & Baro & Socii suis tunc Ju-  
stic' dñi Dom Regis de Banco pō hic  
senket apud Westm. pō veni tam pō  
J. J. per pō Mich. Spencer Ricard  
filium quam idem J. B. in propria  
persona sua nec nec pō Brianus per  
eandem J. B. Ricard filium. Et  
C. C. arm tunc Dic pō Comd' Lincoln  
tunc hic recognovit breve pō servit &  
creet in forma sequenti videlicet qđ  
pō J. L. invenisset eidem Dic pleg' de  
pō breve suum pō senket J. B. &  
H. B. & qđ J. B. & B. nihil habue-  
runt in Balliva sua per qđ Ricard po-  
thessent super quo proditus J. L. nar-  
rando verius ipsum J. B. & prefat  
B. super Brevi Originali prodit tunc  
quererantur qđ idem J. & B. 14 die  
Aprilis Anno Regni dñi Dom Regis  
nunc Anglie, 16. 19 di & armis, &c.  
centum

Apparence.

Retorn del  
breve.

Le Count.

centum oves ipsius J. L. pretii 80 l. apud Westlandal ceperunt & abduxerunt & Bona & Catalla videlicet duas carcotas feni ipsius J. ad Valentiam centum solidorum ibidem nuper invenire ceperunt & asportaverunt Et alia enormia ei intulerunt ad grave damnum ipsius J. L. & contra pacem Domini Regis nunc, &c. unde cum dixit quod delictatus fuit & damnum habuit ad Valentiam 80 l. Et inde tunc produxit sextam Et per J. B. & B. adtunc def. vim & injuriam quando, &c. Et petierunt Licentiam inde interloquendi hic usque in Octabis S. Hillarii tunc prosequens Et habuerunt, &c. idem dies tunc dicitur fuisse prefatus J. L. hic Ad quem diem coram prefato H. H. Mil & Bai & sociis suis Justiciarii dicit Domini Regis de Baco predicti hic scilicet apud Westm predicti tam predicti J. L. per tunc Attornaeum suum predictum quam idem J. B. in propria persona sua nec non predicti B. per eundem J. B. tunc Attornaeum suum Et super hoc predicti J. L. sicut prius narrando versus ipsum J. B. & prefatum Brianum querebatur quod idem J. B. & B. predicti 14 die, &c. (verbae prout supra usque & inde produxit sextam, &c.) Et tunc petiit quod idem J. B. & B. ad Narrationem suam predictam responderent, &c. super quo idem J. B. & B. adtunc ut prius def. vim & injuriam quando, &c. Et quoad venire vi & armis nec non totam transgredi predictam

preter captionem & abductionem octo-  
 gine & novem obium de pd' centum obi-  
 bus superius fieri supposse idem J. B.  
 & B. tunc dixerunt qd' ipsi in nullo  
 fuer' inde culpabiles Et de hoc tunc  
 posuer' se super priam Et pd' J. A.  
 inde similiter Et quoad captionem & ab-  
 ductionem pdictarum octogine & novem  
 obium de pd' centum obibus superius  
 fieri supposse iidem J. B. & B. tunc  
 Pica al coo. dixerunt qd' pd' J. A. agio non, &c. quia  
 tunc dixerunt qd' quidam E. A. gen  
 ante pd' tempus quo supponebatur  
 transg' pdictam fieri scilicet tali die  
 & anno apud B. juxta A. in pd' Com  
 Lincoln per quoddam Scriptum suum  
 Obligatorium concessisset se teneri cui-  
 dam J. W. vis in Centum & sexagine  
 libris solvens eidem Abelle cum inde  
 requisitus fuisset posteaque & ante pd'  
 tempus quo, &c. scilicet (tali die &  
 anno) apud, &c. condidit Testamentum  
 & ultimam voluntatem sua in scriptis  
 & quandam Abellam Wright filiam  
 suam Executricem Testamenti sui pd'  
 constituit & ordinavit Et postea ibidem  
 obiit (pd' 160 l. eidem Abell. Wright  
 Testatrici aretro existend' minime solue)  
 post cujus mortem pdicta Abell. W.  
 filia unus; Executionis Testamenti pd'  
 super se suscepit & diversa Bona &  
 Catalla que fuer' pd' Abelle Testa-  
 triciis tempore mortis sue apud B. pd'  
 ut Executrix Testamenti ejusdem Ab-  
 elle Administravit Et postea & ante  
 pre-

pdictum tempus quo, &c. apud B. pd'  
 cepit in virum ipsum Johannem Bar-  
 nard per qd' iidem Johannes B. &  
 Isabella uxor ejus ante pd' tempus  
 quo, &c. scilicet (tali die & anno) pro  
 recuperatione pdictarum 160 l. eisdem  
 Joh. & Isabelle. uxor ejus adtunc sci-  
 licet aretro existend' impetraverunt &  
 psequuti fuer' extra curiam Cancellar'  
 dice Dom' Regis (eadem Cancellaria  
 apud Westm' pd' in pd' Comitae M.  
 tunc existend') quoddam h'rebe ejusdem  
 Dom' Regis de Justicies versus pd'.  
 Edwardum de placito debi tunc Dic pd'  
 Comie Lincoln' direct' per quod quidem  
 h'rebe dictus Dom' Rex nunc eidem  
 tunc Dic pcepit qd' justiciaret p'sae  
 Edwards per nomen E. R. gener'  
 alias dice Edward R. de Westkan-  
 dal in Comie Lincoln' pd' gener' pd'  
 justie & sine dilacione redderet eisdem  
 Joh B. & Isabelle ux' ejus per noia Joh  
 Barnar gener' uni'is Attoz' Cui Dom'  
 Regis de Banco & Isabelle uxoris ejus  
 Executricis Testamenti Isabelle M.  
 pdictas 160 l. quas eis injuste detinuit  
 sicut rationabiliter monstrare potuer' quas  
 eis reddere deberet ne amplius clamo-  
 rem idem Dom' Rex audiret pro de-  
 fectu Justicie, &c. Quod quidem h'rebe  
 iidem J. B. & Isabella uxor ejus  
 postea & ante pd' tempus quo (videlicet  
 tali die & anno) apud L. pd' cuidam  
 Thom' Caploz Armig' tunc Dic Com'  
 pd' Lincoln' existend' in forma juris ex-  
 equend'



equend' deliberaverunt Cuius quidem  
 h'ebis p'textu idem Die ante p'd'  
 tempus quo, &c. scilicet (tali die &  
 anno) apud Castrum Lincoln' in p'dia'  
 Comie Lincoln' fecit quoddam Warran-  
 tum suum in scriptis & illud sub sigillo  
 officij sui sigillat p'efac. Briano & quib-  
 usdam W. B. Wale B. & Joh. H.  
 Ballibis suis in ea parte direxit eis-  
 dem Briano W. Wale & Joh. & eorum  
 cuilibet conjunct & divisim mandando  
 qd' distringerent seu eorum aliquis  
 distringeret p'dice Edward' per oia  
 Bona & Catalla sua ita qd' esset co-  
 ram eodem Die ad p'ximam curiam  
 suam Lincoln' apud Castrum Lincoln'  
 p'd' tenend' ad respondend' eidem J.  
 B. & H. ux' ejus de placito p'dice Et  
 qualie iidem ballibi p'ceptum illud  
 fozent exerce consiare facerent p'efac  
 tunc Die ad p'or' Cui ille Ad quem qui-  
 dem p'or' Com' scilicet ad Com' p'd'  
 Thom' Capler Die Com' Lincoln' tene  
 apud Castrum Lincoln' p'd' (tali die &  
 anno) v'ed tam iidem J. B. & H.  
 ux' ejus per W. B. Attorn' suum quam  
 p'd' E. per R. S. Attorn' suum & p'd'  
 Briani W. B. Wale & J. H. adtunc  
 dicto p'ceptum p'dictum eis ut p'fe-  
 fertur directe servie & exerce in forma  
 sequen' (videlicet) qd' p'd' E. districe  
 fuit per sex Bobes p'ec 12 l. & manu-  
 cape per J. Den & R. Fem' Et super  
 hoc idem J. B. & H. uxor ejus in  
 pleno Com' illo adtunc narrando versus  
 p'efac



prefat. E. de & super placito illo per  
 Attoꝝ suum p̄dixit tunc dixerunt qd'  
 p̄d' E. non reddidisset eidem Joh &  
 Isab. p̄d' 160 l. quas eis injuste de-  
 tintit p̄o eo videlicet qd' cum p̄dixit  
 E. p̄dixit sexto die Augusti, &c. apud  
 B. p̄d' infra jurisdictionem Curie p̄o Comite  
 p̄dixit per quoddam scriptum suum  
 obligatos concessit si takeri prefat. Isab.  
 M. Testatrici in vita sua a p̄d' 160 l.  
 solvend' eidem Isabelle cum inde re-  
 quistus fuisset p̄dixit tamen E. licet se-  
 pius requisitus p̄d' 160 l. prefat. Isab. M.  
 Testatrici in vita sua seu prefat. Isab.  
 Executrici post mortem ejusdem Isab.  
 Testatricis deum eadem Executrix sola  
 fuit seu eidem J. B. & Isab. ux' ejus  
 post desponsatione inter eos celebrat' non  
 reddidisset sed illi eis reddere contra-  
 dixisset ac illas eidem Joh & Isabelle  
 ux' ejus usque tunc reddere contradixit  
 & adhuc injuste detinuit unde tunc  
 dixerunt qd' deciderat fisci & damnum ha-  
 buerint ad valens 10 l. Et inde tunc  
 produxerunt sententiam, &c. Et protule-  
 runt tunc ibidem in eadem Curia tam  
 Scripe p̄d' qd' habet p̄dictum in forma  
 predicta Testabatur cupis dæ fuit p̄dicto  
 2 die Augusti, &c. quam literas Testa-  
 mentarias p̄d' Isabelle Testatricis per  
 quas satis liqueret eidem Curie ipsam  
 Isab. utot ejusdem Johan B. fore ex-  
 ecutricem Testamenti p̄d' & inde habu-  
 isse Administrationem, &c. Et p̄d' E. per  
 Attoꝝ suum p̄d' ad tunc defend' vñm  
 &

& injuriam quando, &c. Et tunc petit  
 Licent' inde interloquend' usque ad p'or'  
 Com' apud Castrum Lincoln' p'd' extunc  
 tenend' & habuit, &c. idem dies tunc  
 datus fuit p'efat' J. B. & Ihab uxor' ejus  
 ibidem, &c. Ad quem quidem ad p'or'  
 Com' videlicet ad Com' p'd' vic' tenet apud  
 Castrum Lincoln' p'd' (tali die & anno)  
 ven' tam iidem Johan' B. & Ihabella  
 uxor' ejus quam p'd' C. per Attoz'd suos  
 p'dict' Et super hoc iidem Johan' &  
 I. tunc petierunt q'd p'd' C. ad Part'  
 suam p'd' responderet, &c. super quo p'd'  
 C. adtunc & ibidem def. vim & inju-  
 riam quando, &c. Et tunc dixit q'd  
 p'd' J. B. & Ihab uxor' ejus Actionem  
 suam p'dict' versus eum habere non de-  
 berent quia dixit q'd p'd' Ihab W. Ce-  
 natrix in vita sua tempore confectio-  
 n' scripse obligatoz', &c. per minas p'eded  
 cu' cea Action. Repl. non per minas &  
 issue in Com'. Cur Ideo adtunc & ibid'  
 in plena cursu eod' ill' p'ceptum fuit  
 ballivo wapentagij de Lawdes in p'd'  
 Com' Lincoln' infra jurisdiction' ejul-  
 dem Cur q'd Venire fac' coram p'efat' C.  
 C. Vic' ejuldem Com' Lincoln' ad p'or-  
 timum Com' Lincoln' p'd' apud Castrum  
 p'd' extunc tenend' 12, &c. per quos, &c.  
 Et qui nec, &c. ad recog'd, &c. quia  
 tam, &c. Ad quam quidem p'or' Com'  
 videlicet ad Com' p'd' C. C. Vic' Com'  
 Lincoln' tene apud Castrum Lincoln'  
 p'd' (tali die & anno) ven' tam iidem  
 J. B. & I. uxor' ejus quam p'd' C. per  
 Attoz'nat

Attornat suos p<sup>r</sup> Et W. Elston tunc  
 Ballivus Wapentagij p<sup>r</sup> ad tunc &  
 ibidem retornabit p<sup>r</sup> p<sup>r</sup>cepte de ben  
 fac ei inde directe una cum pannello de  
 nominibus Cui eadem p<sup>r</sup>cepte amier  
 in omnibus servit & exequit Et tunc  
 videlicet Thomas Cabb, &c. impanellat  
 exace ad tunc & ibidem scilicet ben qui  
 ad veritatem de p<sup>r</sup>emissis dicend<sup>r</sup> e  
 lecti triati & jurat<sup>r</sup> ad tunc dixerunt  
 super sacridm suum qd<sup>r</sup> p<sup>r</sup> E. tempore  
 consecrationis Scripti Obligatorij p<sup>r</sup>dice  
 fuit sui juris ad Largum & Scriptum  
 illud ex mera & spontanea voluntate  
 sua p<sup>r</sup>efat Isabelle W. Testatrici in  
 vita sua fecit & non ob metum mina  
 rum p<sup>r</sup>out p<sup>r</sup> E. superius placitando  
 allegasset Et tunc assiderunt damna,  
 &c. ad unum denarium Et p<sup>r</sup>o mis  
 & custag ad 2 d. Per qd<sup>r</sup> ad tunc & ibi  
 dem per eandem curiam cons<sup>r</sup> fuit  
 qd<sup>r</sup> p<sup>r</sup>dice J. B. & J. ux<sup>r</sup> ejus re  
 cuperarent versus p<sup>r</sup>efat E. debit<sup>r</sup>  
 suum p<sup>r</sup> & damna sua p<sup>r</sup>dica per ju  
 ratores p<sup>r</sup> in forma p<sup>r</sup> assessa nec  
 non 23 s. & qd<sup>r</sup> iidem J. & J. ad re  
 quisitionem suam p<sup>r</sup>o mis & custae  
 p<sup>r</sup> per eandem Cui ibidem de incre  
 mento adjudicat que quidem debit<sup>r</sup>  
 damna & mis in toto attingunt, &c.  
 sup quo tunc Warrant de Tebari fac<sup>r</sup> il  
 luit. Et iidem Joh<sup>n</sup> B. & Isabella  
 ux<sup>r</sup> ejus ulterius tunc dixerunt qd<sup>r</sup>  
 p<sup>r</sup> E. p<sup>r</sup>dico tempore quo, &c. apud  
 Westkandal p<sup>r</sup> fuit possessione de  
 p<sup>r</sup>

pd' 89 Obibus & de 51 agnis ut de Obi-  
 bus & agnis suis propriis Aplogue sic  
 inde possessione existens idem Brianus  
 & pd' W. B. Robert Caplor & W. S.  
 postea & ante p'or' Com pd' Dic apud  
 castrum Lincoln pd' extunc p'or' sequen-  
 ut p'fertur p'or' tenendum scilicet p'ed-  
 dicto tempore quo, &c. pd' 89 oves & 51  
 agnos pd' E. apud W. pd' infra Wapen-  
 tag, &c. pd' & infra pd' Com Lincoln  
 virtute p'cepti p'edice repetunt abinde  
 fugaverunt & oves & agnos illos per  
 probos & legales homines de Com pd'  
 videlicet per quosdam T. B. R. G. T. D.  
 & T. D. ad summam quadragine li-  
 brarum legitimo modo app'ietari fe-  
 rer' & post app'eciationem pd' in forma  
 p'dicta factam scilicet p'dicto tempore  
 quo, &c. iidem Brianus W. B. R. T.  
 & T. S. eisdem 89 oves ac 51 agnos sic  
 app'ietiae eidem Johan B. apud, &c. pd'  
 ad p'etium pd' deliberaver' detinend' ut  
 oves & agnos suos proprios in partem  
 satisfacionis debi & damnozum suo-  
 rum p'dictorum per eundem J. & p'efac  
 Alab ur' ejus ut p'fertur recuperat  
 quos quidem oves idem Johan ad  
 p'etium pd' de p'efac Briano, &c.  
 in partem satisfacionis debi illius ad-  
 tunc & ibidem recepit prout eidem Joh  
 bene licet Que quidem captio & in-  
 gatio p'dictarum 89 obium & agnozum  
 p'dictorum ac deliberatio eorundem  
 obium & agnozum eidem J. B. nec non  
 receptio obium & agnozum illorum p'  
 eundem

eundem J. B. in forma & ex causa predicta facta fuit eadem transgressio captio & abduction p<sup>d</sup> 89 obium unde p<sup>d</sup> Johannes Lacon superius se tunc inde querebatur Et p<sup>d</sup> Johan Lacon quoad placitum p<sup>d</sup> p<sup>d</sup>icatum J. B. & Brian quoad captionem & abductionem p<sup>d</sup> 89 obium de p<sup>d</sup> 1000 obibus superius facta superius in barram placitum tunc dixit qd<sup>r</sup> ipse per aliqua in eodem placito preallegat ab actione sua p<sup>d</sup> de trans omniu habend<sup>r</sup> precludi non deberet quia tunc dixit qd<sup>r</sup> ipse p<sup>d</sup>ice tempore transgressus illius facta apud W. p<sup>d</sup> possessionariis fuisset de p<sup>d</sup> 89 obibus ut de obibus suis propriis Et sic inde possessionariis existens p<sup>d</sup> Johan B. & Brianus eodem tempore transgressi. &c. de injuria sua propria & absque tali causa per eosdem Johan B. & Brianum superius obligat eisdem eadem 89 obes apud W. p<sup>d</sup> inventi ceperunt & abduxerunt contra pacem dice Dom<sup>r</sup> Regis put ipse superius versus eos querebatur absque hoc qd<sup>r</sup> p<sup>d</sup> E. p<sup>d</sup> tempore transgressi p<sup>d</sup> fuit possessionariis de p<sup>d</sup> 89 obibus ut de Bonis & Catalis suis propriis put p<sup>d</sup> J. B. & Brianus superius allegaver<sup>t</sup> Et hoc tunc paratus fuit verificare, unde, &c. Et p<sup>d</sup> J. B. & Brianus ut prius tunc dixerunt qd<sup>r</sup> p<sup>d</sup> E. p<sup>d</sup>ice tempore transgressi p<sup>d</sup> superius fieri suppo<sup>r</sup>it fuit possessionariis de p<sup>d</sup> 89 obibus ut de Bonis & Catallis suis propriis put ipse superius allegaver<sup>t</sup>



allegaver Et de hoc tunc posuer se super patriam & p<sup>r</sup> J. L. inde similiter Jbo tunc ad triandum exitum p<sup>r</sup>, &c. Tryal p nisi prius apud Lincoln Et postea re- tornd Jur, &c. elect triae & jurae di- cunt super sacrdm suum qd' infra no- minar E. R. gen' infra scriptum tempore transg' infra scripe interius fieri supposie non possessionae fuit de infra scripe 89 obibus ut de Bonis & Catallis suis p<sup>r</sup>is prout p<sup>r</sup> J. L. interius p<sup>r</sup>- tando allegabit Et assidut damna, &c. ad 2d & p<sup>r</sup>o mis 2d, &c. prout per record & p<sup>r</sup>ocelsa inde in eadem Cur' dicti Dom' Regis de Banco p<sup>r</sup> hic scilicet apud Westm p<sup>r</sup> residen plenius liquet Et idem J. B. ulcius dicit qd' p<sup>r</sup> J. L. in record & p<sup>r</sup>ocessu p<sup>r</sup>o nominat p<sup>r</sup>o quo ju- dicitum in eadem curia hic ut p<sup>r</sup>efertur reddie fuit & p<sup>r</sup> J. L. modo quer' qui billam p<sup>r</sup>o verlus ipsum J. B. ut p<sup>r</sup>- fertur est una & eadem persona & non alia neque diversa qdque J. B. modo Def. & p<sup>r</sup> J. B. verlus quem simul cum p<sup>r</sup>efat' Briano iudicium illud in eadem Cur' hic in forma p<sup>r</sup>o reddie fuil- let una & eadem persona & non alia neque diversa Et qd' p<sup>r</sup>o centum obes in p<sup>r</sup>o placito transg' per p<sup>r</sup>efat' J. L. verlus ipsum J. B. & p<sup>r</sup>o Brianum ut p<sup>r</sup>emittitur p<sup>r</sup>ecue specificat & p<sup>r</sup>edice centum obes in billa p<sup>r</sup>o superius men- tionat & per ipsum J. B. in usum & commodum suum p<sup>r</sup>oprium converti & disponi supposie fuer' une & eadem obes



obes & non alie neque diuerse Cuique  
etiam captio & abductio p̄ 89 obium  
de p̄ 100 obibus in p̄dicto placito  
transit unde iudicium p̄dictum p̄ p̄-  
fac Johān A. ut p̄feratur redditus fuit  
superius mentionat sunt eadem trans  
quoad Conversionem & dispositionem  
p̄dictarum 89 obium de p̄ 100 obibus  
in hilla p̄d versus ipsum p̄d J. B. ex  
hibitis specificat & non alie neq̄ diuerse  
q̄que insuper iudicium p̄d p̄ p̄fac J. A.  
ut p̄ferat redditus adhuc in plenis robore  
vigore & effectu suis minime reuersat  
seu annullat remanet & existit Et hoc  
peratus est verificare unde per Jurā si  
p̄d J. A. actionem suam p̄d inde ver-  
sus eum habere debeat, &c.

Et p̄d J. A. quoad p̄d p̄litum p̄dicti  
Johannis B. quoad Conversionem p̄d  
89 obium de p̄ 100 obibus respo-  
superius facit dicit q̄d ipse per aliqua in  
eodem placito, &c. p̄cludi non Quia  
dicit q̄d bene & verum est q̄d idem J.  
A. p̄d quinden Palche Anni, &c. in p̄-  
curia de Banco hic per iudicium exul-  
dem Cur. recuperabit versus p̄d J. B. &  
Bryanum tam p̄d 2 occasione transit  
p̄d videlicet pro captione & fugatione p̄d 89  
obium quam sex libras, &c. pro mis per  
Cur. &c. prout p̄d J. B. superius  
allegabit sed idem J. A. ulterius dicit  
q̄d p̄d 2d pro damnis p̄d per Jurā p̄d  
in forma p̄d non assessa fuere pro valore  
egundem 89 obium seu pro Conversi-  
one obium illarum ad ulum p̄dictorum

Replie:  
Plaint con-  
fesse le re-  
covery  
in le Bar  
mes que  
Damages  
assess sur  
ceo ne-  
fuer assessa  
pur le va-  
lue des dits  
barbits, ou  
leur con-  
version, &c.

Traverse  
le identity  
del Count  
& le action  
pledged en  
bar quant'  
al Conver-  
sion del  
barbirs, &c.

Johannis B. & Bziani proprium. Et idem L. L. ulterius dicit qd' pd' J. B. die & anno sup'dict' in villa pd' superius specificat apud Westkandal pd' vendidit pd' 89 oves quibusdam personis eidem J. L. ignoe & oves illas ad usum & Commodum ejusdem Johannis B. Bzian adtunc & ibidem per venditionem pd' convertibat que quidem Conversio earund' 89 obium in forma pd' facta est eadem Conversio unde idem J. L. superius versus eundem J. B. inde modo queritur absque hoc qd' captio & abductio pd' 89 obium per pred' J. B. & prefat' Bzianum S. eidem Johanni L. in forma pd' illat in pd'icto plito transgit unde judicium pro eodem J. L. reddit' fuit in eodem placito superius mencio- nat' est eadem transgressio quoad Con- versionem & dispositionem eorund' 89 obium unde idem J. L. superius versus prefat' J. B. ut prefertur modo queri- tur modo & forma prout pd' J. B. su- perius allegabit Et hoc paratus est verificare, unde, &c.

Special' Demur' ad Replicat' eo qd' placitum illud ponit matias de re- cordo & in Lege ad exitum p patriam triand' & joynder. Et quoad exitum pd' per priand' triand' superius junce pceptum est Dic qd' venire fac, &c.

Plea,

Plea, That the Plaintiff delivered the Horse to B. to Sell for him, and that he Sold him to the Defendant upon a price if he was pleased with him, and gave him leave to try him by Riding threes Miles.

**Sur.** **A** Etio non, &c. Quia dicit qd' ante pd' tempus quo supponitur Conuersionem pd' spadonis fieri scilicet (tali die & anno) apud, &c. pd' Ricus de spadone pdict' Possessionae existens eundem spadonem cuidam T. W. de, &c. adtunc & ibidem deliberabit & eidem T. W. auctoritatem dedit ad vendend' spadonem pd' ad usum & proficuum ipsius T. pro tali summa & in tali modo prout prefat' T. W. melius visum foret ratione cuius pd' T. W. de spadone pd' sit Possessionae existens postea & ante pd' tempus quo scilicet pd' — die, &c. apud, &c. pd' cum prefat' T. R. agreeabit qd' pd' T. R. spadonem pd' in Possessionem suam caperet & rationabiliter probaret Anglice (should try him) Et si spado pd' tempore capcionis pd' non sanus esset Anglice (were not then sound) aut si super rationabilem probationem spado ille non placeret eidem T. R. Anglice (the said T. R. did not like him) qd' tunc idem T. R. in conueniente tempore post rationabilem probationem illum redeliberaret

ret Anglice (should send him back again)  
 prefat C. W. spadonem pdice sed si  
 pdice C. R. super probationem illam  
 allocaret Anglice (should like) de spa-  
 done illo tunc pd' C. R. solveret prefer  
 C. W. p spadone illo 101. legalis, &c.  
 cum inde requisitus fuisset Cujus qui-  
 dem agreamene pretertu idem C. R.  
 eodem die, &c. per consensum pd' C. W.  
 spadonem pd' in possessionem suam cepit  
 posteaque scilicet (tali die & anno)  
 pd' C. R. apud, &c. super spadonem  
 pd' ad probandum si idem spado esset  
 laudis adplarie Anglice (the liking) pd'  
 C. R. per spatium trium Mille passu-  
 rum rationabiliter equitabit videlicet ab H.  
 pd' usque D. in pdictis Cond. &c. idem-  
 que C. R. hujusmodi equitatione &  
 aliis legitimis modis super diligente  
 visu Anglice (marking) spadonis pd' in-  
 venit spadonem pd' esse non tantum Ita  
 quod idem spado eodem C. R. displi-  
 cuit Anglice (the said T. R. did dislike  
 the said Gelding) per quod idem C. R.  
 postea & infra convenient tempus scilicet  
 tali die, &c. apud, &c. spadonem  
 pd' prefat C. W. redeliberabit secun-  
 dum formam & effectum agreamene  
 pdicti que quidem possessio spadonis  
 pd' & equitatio ipsius C. R. super spa-  
 donem pd' in forma pd' & ex causa pd'  
 est eadem debentio spadonis pdicti ad  
 manus pd' C. R. & eadem Conversio  
 spadonis pdicti ad usum ipsius C.  
 proprium unde pd' R. superius se modo  
 queritue

queritur Cum hoc quod p̄dice T. R. verificare vult quod p̄dice spado possit debent onem spadonis p̄dicti ad manus p̄d' T. R. sup̄alpece bene tractae fuit Anglice (well ordered) Et in tam bona Statu Anglica (in as good Case and Plight) p̄dicto tempore redeliberationis spadonis p̄dice quam spado ille fuit tempore quo primum ad manus T. R. devenit Et hoc paratus unde, &c.

Precludi non, &c. quia protestando non Cogit aliqua in p̄dicto placito p̄d' T. R. superius allegae fore vera pro placito dic qd' ipse p̄d' R. p̄d' — die, &c. apud, &c. p̄d' Possessionae fuisse (ut in narr usque) ad usum suum proprium convertit & disposuit prout ipse p̄ h̄be & narrationem sua p̄d' superius suppon absque hoc qd' p̄d' T. R. agreeabit cum p̄d' T. R. modo & forma put p̄d' T. R. superius placitando allegavit Et hoc, &c. *Issue sur le Agree-*  
*ment.*



## Bar by Release General.

**Sur.** **A** Crio non quia die qđ post pđ  
 Tempus quo supponitur ea-  
 dem bona in narracone pđ superius  
 mentonae ad manus & possessionē pđ P.  
 p̄ inventionem devenisse & ante levati-  
 onem querele pđicti B. pđ scilicet (tali  
 die & anno) pđ B. per nomen, &c. apud  
 B. pđ, &c. per quoddam Scriptum su-  
 um relaxationis qđ idem P. sigillē ip-  
 sius signae hīc in Curia p̄fert ejus  
 dae est eisdem die & anno remisit relax-  
 abit & omnino p̄ se Heredē Creditozibus  
 & Administratozibus suis imperpet-  
 quiete clamabit p̄fear P. omnes & om-  
 ninodas Nationes, &c. (Recite all the  
 Release) a principio mundi usque diem  
 dae ejusdem Scripti relaxationis Et  
 hoc paratus est verificare, &c.



**Trover for an Anvil.** Plea, That the Defendant as Bayliff of the Court Baron of E. M. Gent. &c. by vertue of a Precept (*Leuari*) did Levy and take the Plaintiff's Anvil, had it appraised, and sold it for 26s. and gave the Money to O. B. who had recovered the same against the Plaintiff in the said Court, in an Action on the Case.

**Jur.** **A**ctio non quia dicitur quod diu ante  
 per tempus quo, &c. quidam  
 E. M. Gen. R. M. Gen. & G. R. Gen.  
 fuerunt seise de manerio de T. cum  
 pertinens in Com. per in dominico suo ut  
 de feodo ipsius E. R. & G. sic inde sei-  
 sic existens ante per tempus quo, &c. sei-  
 licet ad Cui Baronis per E. R. & G.  
 manerij sui per tene infra manerium il-  
 lud (tali die & anno) quidam O. B.  
 coram R. G. ad tunc Seneschallo eorum-  
 dem E. R. & G. Curie manerij sui  
 predicti assignavit quandam querelam de  
 placito Transgressionis super casum  
 versus per R. T. preclusus superinde con-  
 tinuatus fuit coram dicto Seneschallo in Cu-  
 ria predicta apud T. per quousque consi-  
 deratum fuit per eandem Cui ibidem  
 quod per D. recuperaret versus prefate  
 R. damna sua occasione Transgre per  
 ad 25 s. & 12 d. p. missis & expensis  
 suis in Lege & quod per R. esset in misericordia Su-  
 per quo postea & ante per tempus quo, &c.

scilicet 9 die, &c. quoddam preceptum extra eandem Cur emanans & scdm consuetudinem ejusdem curie ballivo manerij pd directum preceptum fuisse. Item ballivo seu ejus deputato qd Lepari faceret de Bonis & Catallis propriis pd sicut ad opus & usum pd C. B. tam 25 s. p damnis suis quam 12 d. pro missis & expensis in Lege que pd C. B. recuperasset in Curia vicorum C. B. & C. manerij sui pd & qd heret pecuniam vel ejus valorem ad istam eandem Curiam indilate ad satisfaciendi pd damnis & missis pd qd quidem preceptum postea & ante pd tempus quo, &c. scilicet eisdem die & anno apud C. pd delictae fuit prefae Johan adtunc ballivo manerij pd Ministro ejusdem curie in forma juris exequens Virtutem cuius idem Johan pd Incudem de Bonis & Catallis pd sicut postea & ante pd tempus quo, &c. scilicet tali die & anno apud C. pd invento cepit & asportavit & pd Incudem per probos & Legales homines in pd Curia manerij pd ad 26 s. appreciari fecit & illam ignoto adtunc & ibi vendidit p 26 s. & pd 26 s. eid C. B. in satisfactorem dampnoru & misar. illoru delicta put ei bene lieuit. Que est ead. inventio & conversio Incudis pd unde pd R. C. superius se modo queritur & hoc patet est verificare unde petit iudic. & pd R. C. Actionem suam pd inde plus cum habere debeat, &c.

O F  
ACTIONS  
I N  
DETINUE.

240110

401111

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O F  
ACTIONS  
I N  
DETINUE.

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*Of Detinue.*

**N**Otwithstanding this Action is not brought so frequently as formerly, these Actions of *Detinue* having of late times been much turned into Actions of *Trespafs*, and upon the Case as you may perceive in the foregoing Treatise (wherein the Reasons of such alteration are set down;) yet this Action is often brought, and it will lye in some Cases where Actions on the Case lie not. Besides, there is much learning and good pleading in our Books upon this Title, which I shall in some Cases observe,

## Of Actions in Detinue.

observe, upon which Considerations I thought it not improper, to add some brief Remarks and settled Points as to this Action.

*Detinue* is a Writ that lies against him, who having Goods or Chattels delivered him to keep, refuseth to redeliver them. *Actio depositi* in the Civil Law answers this Action: It lies where any Man comes to Goods, either by delivery or finding, *Co. Lit. p. 286. b.*

For the better understanding the nature of this Action, I would have you review the diversities between this Action and the Action of Trespass, to which I shall add some more General Notes.

And first, As to the Gift of the Action.

If you bring an Action of *Detinue* for any thing you have bought, and cannot have it, shew the time when you bought it, what you paid, and the time appointed for the delivery of it. If you have delivered any thing to any person, and cannot have it up again, you may have the like Action to know the value of the thing delivered, and to what use you did deliver it, and what time was appointed for the delivering of it.

In *Detinue* for Writings, either by delivery, or that they came to the Defendants Hands by Chance, know the date and the effect of the Writings, the time when the Plaintiff was possess'd of it, and the time when the Defendant had it.

An



An Action of *Detinue* lies without request, but not an Action on the Case.

He that brings a *Detinue* ought to have property, 6 H. 7. 9.

*Detinue* implies property in the Plaintiff 6 H. 7. 9.

The thing detained must be certain, whereof the property may be known, for which *Detinue* is brought; therefore it lies not for Money out of a Bag, or Corn out of a Sack.

The ground of *Detinue* is to recover the thing it self in individualty, if it may be had, and if not, Damages, 3 H. 6. 4.

The Gift of the Action of *Detinue* is the Bailment. Goods are delivered to Baron and Feme, *Detinue* shall be against the Baron only, because the Wife had not any possession, and so cannot be said to detain, 38 Ed. 3. 1.

The Writ of *Detinue* is grounded upon two things. The Bailment, and the Trover.

If a Man find an Obligation, and the Obligee demands this of him, and he denies to deliver it; yet he shall not have Trover and Conversion but *Detinue*, wherein he shall recover Damages for the detainer, but not for the Obligation, by Coke in 1 Rolls Rep. 130. *Isaack and Clerks Case: Quære*

An Action of *Detinue* for Charters sounds in the Realty, for therein Summons and Severance lies; and in *Detinue* of Goods a *Capias* lies, but for Charters in Special a *Capias* lieth not, Co. Lit. p. 286.b. De-

Detinue is either for { Chattles,  
or  
Charters.

*Breve de detentione dicitur a detinendo*, because *Detinet* is the principal Word in the Writ; Co. Lit. 286. b.

Writ.

The Form of it. For Charters or Writings.

*Rex Vic', &c. Præcipe A. qd', &c. reddat*  
 Com. B. *unam Chartam quam ei injuste detinet, ut dicit, & nisi, &c. vel sic: Quod reddat B. unam pixidem cum tribus Scriptis Obligatoriis in eadem pixide content' sub sigillo præd. B. consignat.*

And the Rule in the Register is, That in this Writ for restoring Charters, there must be contained the certain number of the Writings.

Or the Writ may be thus.

*Præc. A. quod, &c. reddat B. quoddam Scriptum per quod præd. B. omnia Bona & Catalla sua in man. de N. nuper existen. J. de L. dedit & concessit qui ei injuste, &c. N. B. 138.*

*Rex*

*Rex Vic. Præcipio tibi qd. iusticies A. qd. in Comit. iuste, &c. reddat B. unam Chartam vel duas Chartas vel unum Scriptum Obligatorium vel conventionale vel acquietanz', &c. quod quas vel qua ei iniuste detinet ut dicit sicut rationabilis monstrare poterit, ne amplius, &c.*  
Reg. Or. 159. b. Nat. Br. 138.

Note, You cannot bring *Detinue* for Writings, which concern a Freehold in the County Court: If you do a Prohibition lies.

Note, When a Man demands Writings in a Bag, Box or Chest, he need not make mention in the Writ or Count, what Writings they were, *Reg. Or. 60. a.*

If the Writ be against an Executor, it need not name him Executor, because he is only charged with the detainer.

The usual course to enter Warrants of Attorney, or Effoyns upon this Writ is in *placito debiti*, *Cro. Eliz. 867. Bateman and Elman.*

*Detinue for other Goods.*

And they are of several sorts, as Trespas, as you may see in the ensuing Presidents.

*Wbo*

*Who shall have this Action, and who not.*

Baron and  
Feme.

Goods taken out of the Possession of Wife, and then she Marries and dies, the Husband shall not have a *Detinue*, unless his Wife make him Executor, 38 H.6.26. Pl. 38.

Husband and Wife joyn in *Detinue* for a Deed of Lands, 38 H.6.25. But if the Husband Bail the Deeds he shall have it alone; but if Bailment be before Coverture they ought to joyn, 21 H.7.29.

Heir.

Baron Bails the Charters of his Wife, he only shall have *Detinue*: If he lose them they ought to joyn in Action of Case for Damages. The Heir in some Cases shall have *Detinue* for the Charters, tho' he hath not the Land. As if I am Infeoffed with Warranty, and I enfeoff another with Warranty in Fee, now my Heir shall have a Writ of *Detinue* for the Deed by which I am Enfeoffed, for that he may have advantage of the Warranty, N. B. 138. b.

Custom is, That the Heir shall have the Principal Goods, he shall have *Detinue* for them, 30 Ed. 3. 3.

The Heir of a Copyholder shall have a *Detinue* for the Copy before admittance, 4 Rep. 22. b.

The Heir of a Disseisee, shall have *Detinue* for the Deeds, N. B. 138. L.

The

The Heir general shall have the ancient Deeds comprehending the Warranty, where the Feoffor obligeth him and his Heirs to Warranty, 1 Rep. 1. Lord Buckbursts Case.

The Heir in Tail shall have a *Detinue* against the Discontinuee, for the Deed of Intail, Nat. Br. 138.

If a Man deliver Goods to L. to deliver to C. C. may have *Detinue*; for the property is in him, 9 H. 6. 58. Bayles.

If my Baylee bail over to another, I may have *Detinue* against the second Baylee, 1 t. H. 4. 46. b.

If I deliver a Deed to A. to redeliver and he lose it, and B. finds this, who delivers it to C. who had right to it, he is not afterwards chargable to me in *Detinue* for it, for that he is not privy to my Bailment, 9 H. 6. 58.

Avowant shall have *Detinue* against a Avowant, Sheriff upon a *Retorn. Habend.* where he Returns, *quod Averia elongata sunt*; per Westm. 2. c. 2. 9 H. 6. 42.

The Plaintiff in a Replevy shall not have a *Detinue* for Cattle taken in *Withernam*, 6 H. 7, 8. because he hath no Property.

In a Replevin, the Avowant Returns irreplevifable, yet if the Plaintiff tender amends he shall have *Detinue*, 8 Rep. 147.

If an Horse be Stolen and Sold in Market overt, and be not tolled according to the Statute of 2 & 3 Mar. c. 7. the owner shall have *Detinue*. Proprietor.

## Of Actions in Detinue.

A Feme and another person were made Executors, the Wife took Husband, and the Baron did not alter the Property of the Goods of the Testator, the Wife dies, the other Executor shall have an Action of *Detinue* against the Husband for the said Goods, *Benl. p. 10. Case 38.*

Le Roy.

The King shall have *Detinue* for the Cattle of an Outlawed person, 4 H. 7. 17.

Lord.

The Lord shall have *Detinue* for an Herriot Custom, if it be taken after seizure, because he had the Property, *Trin. 9 Jac. B. R. Cresses Case.*

The Lord by Escheat shall have *Detinue* for the Deeds, 1 Rep. p. 2.

Estranger  
to the  
Title.

An Estranger shall not have *Detinue* for Deeds, unless he make Title to the Land; but Action of the Case he may have upon request, 33 H. 6. 26.

Feoffee.

If a Feoffment be made without Warranty, the Feoffee shall have *Detinue* for the Deeds, 1 Rept. 1 Lord Buckhurst's Case.

If the thing lye in Grant, as a Lordship, Rent, Advowson, &c. be granted to A. with Warranty, who Grants it to B. B. shall have *Detinue* for the Antient Deed, because he cannot make a Title without it, *Lord Buckhurst's Case, 1 Rept.*

Feoffee shall have *Detinue* for every Deed, which concerns the making of his Estate Good, N. B. 138. K.

Feoff.



## Of Actions in Detinue.

191

Feoffment to two in Fee, the Survivor shall have *Detinue* for the Deeds, 1 Repr. Lord Buckhurst's Case.

*Tenant pur vie* dies, he in Remainder He in Re- shall have *Detinue* for the Deed, 9 H. 6. 54. <sup>mainder.</sup> So he in the Remainder of a Copyhold, 4 Repr. 22. b.

A Leaseth an House with Implements to Lessor, B. for years, A. shall have *Detinue* for the Implements at the end of the Term, tho' they are wasted, 20 H. 6. 16.

### *Against whom Detinue lies or not.*

It lies not against Baron and Feme, sup- Husband posing they detain, 38 Ed. 1. 1. <sup>and Wife.</sup>

A Feme finds Goods *dum sola fuit* and takes a Husband; *Detinue* lies against the Baron and Feme, Lib. Intr. 209. Yet a *Detinue* lies not against Baron and Feme, upon Trover before the Coverture, 38 Ed. 3. 1.

Administrator sold a thing, the Exe- Executors, cutor proves the Will, he shall have a *De- Admini- tinue* against the Vendee of the Admini- strators, Pl. Com. 275. Foxlies Case.

In *Detinue* against the Executors, they need not be named Executors, for the detainer is the point of the Action, Cro. 118. Pl. 62.

The Executor shall have *Detinue* for Goods in the Possession of the Executor of his joynt Executor, if the said Executor will pay a Debt to the value, 3 Eliz. Dyer 187. O 2 *Detinue*

## Of Actions in Detinue.

*Detinue* is brought against two Executors upon Bailment to the Testator, one shall answer without the other, and both out of the Statute of 49 Ed. 3. because this Action is not founded upon the Bailment, but upon the proper *Detinue* of the Executors, 1 *Rolls Rept.* 127. by a *concessum in Isaack and Clarks Case.*

**Avowant.** Avowant Returns irreplevisable, the other tenders amends, upon refusal, he shall have *Detinue.*

**Sheriff.** It lies against a Sheriff, where he Retorns upon a *Retorn. Habend. qd. averia elongata sunt, per Westm. 2. c. 2. 9 H. 6. 42.*

*Detinue* against the Sheriff who keeps the Goods and sells them not, *Noy 107. Waller and Weedale.*

**Baylee.** Goods are delivered to *A.* to keep, and they are stolen, yet *Detinue* lies against him, 4 *Rept.* 83. *Southcotts Case.* *Aliter*, if he take them to keep as he would keep his own, *ibid.*

**Executor of Baylee.** If a Baylee of a thing by Indenture burn it, and dies, his Executor shall not be charged in a *Detinue*, for he shall not be charged without Possession in him, and the Action dies with the person, 3 *H. 6. 44. b.*

**Carrier.** A Carrier loseth his Goods, or they are stolen, yet *Detinue* lies against him, 4 *Rept.* 84.

*For what things Action of Detinue lies, and for what not.*

*For Money.*

*Detinue* lies of a piece of Gold, *pretij* 22 s. altho' it doth not lie of 22 l. in Money, for here he demands the particular piece, 16 *Jac. Mason and Malgrave*, 1 *Rolls Abr.* 606.

It lies for Money in a Bag, or for a Bag sealed and 100 l. in *eadem Baga content.* 18 H. 6. 20. b.

*Detinue* for Money not in a Bag or Chest, the Action lies not; for *Detinue* lies always of a thing certain, and which may be known to be delivered, *Cro. Eliz.* 473. *Banks and Whetston*, N. B. 138. a. Q. if the Money were in view and the Defendant took it. If the Contract be for 60 l. Flemish Money, Action of Debt lies: But if it had been for so many Ounces of Flemish Money, it may not be demanded by the name of a Sum, but he ought to have a Writ of *Detinue*, and by this he shall recover the thing valued, *Yelv. p.* 81. in *Rastal and Drapes Case*.

If a Man lend a Sum of Money to another, no *Detinue* lies of this, but Debt, 18 H. 6. 20. b.

It lies of a *Rationabili parte Bonorum*, *Rationabili parte bonorum.*  
17 Ed. 3. 9.

*If rum.*

## Of Actions in Detinue.

If Goods are lost, *Detinue* lies.

Goods are bailed to deliver over, *Detinue* lies, *N. B.* 138. *a.*

For Corn  
for Con-  
tract.

A. contracts for Corn to be delivered at a day to come, he shall have *Detinue* at the day for this, *No. Lib. Int.* 169. *b.*

A. delivered B. Corn and Wine, &c. and they Perish, yet *Detinue* lies for them, *Doct. and Stud.* 129.

It lies not for Corn out of a Sack.

For Detain-  
er upon  
Distress.

If the Avowant hath returned irreplevisable; yet if the Owner of the Beasts or Goods tender to him all that is due upon the Judgment in the Avowry or the Arrears, (whereby the certainty doth appear,) if the Defendant refuse to deliver the Distress, he may have *Detinue* for the detainer afterwards; and by that means recover them, for they are in nature of a Gage, *Co. Mag. Ch.* 107, 341. 8 *Repr.* 147.

For imple-  
ments lea-  
sed.

*Detinue* lies for the principal Goods, if it be the Custom that the Heir shall have them, 20 *H. 6.* 16. So for Implements leased with Land, Lessor shall have *Detinue* for them at the end of the Term, 30 *Ed. 3.* 2. 20 *H. 6.* 16.

For Goods  
given in  
Marriage.  
Of Char-  
ters.

After a Dowry it lies for Goods given in Marriage, *N. B.* 139. *a.*

It lies of Charters concerning Land.

Upon Mort-  
gage of  
Goods, the  
Money be-  
ing paid.

It lies upon a Bargain and Sale by Indenture of Goods upon Condition of Payment of a certain Sum such a day, the Bargain and Sale to be void. The Money is paid at the day, and the Goods are

are not delivered ; for the Condition being performed, he ought to have them again, and then detaining is a Tort, *Gro.*

*Eliz. p. 866. Bateman and Elman.*

If I Bail Goods to *A.* and he Bails them to *B.* I may have *Detinue* against *A.* Against  
Baylee.

A Man shall have an Action of *Detinue* For Charters. For Char-  
ters.  
of Charters, which concern the Inheritance of his Land, if he know the certainty of them, and what Land they concern, or if they be in a Bag sealed or Chest locked, tho' he knoweth not the certainty of them, *Co. Lit. 286. b.*

### Of the Count in Detinue.

The Count ought to name all things in certain and the value.

The Count was, That such a day and year he bailed to *B. Catalla, &c. (scilicet)* one Cup of Silver *ad valent. &c. salvo custodiend' & eadem querenti cum requisitus fuisset redeliberand. &c. Lib. Int. c. 212. b.*  
Bailment of Spoons *ad valent. &c. Lib. Int. 211.*

If the Writ be of *Bona & Catalla*, the Count cannot be of Charters, *22 Ed. 4. 12.*

It need not be said in the Count how the Defendant came to them, *9 H. 5. 14. 4 Ed. 4. 9. Lib. Int. 213.*

If the Writ be of a Box with Deeds, the Count shall be accordingly, and not of a Deed Certain, *41 Ed. 2. 3. 14 H. 4. 6.*

The Plaintiff in a *Detinue* for Deeds of Land, ought to make Title in the Count, 33 H. 6. 26. Otherwise, he must make request, and then Action on the Case lies, *per Prisot.*

*Detinue* of Goods, the Writ was *ad valentiam* 20 l. the Declaration was *ad valentiam* 40 l. it was Error, and the Judgment was reversed, *Cro. Eliz.* 308. *Young and Watson.*

The Antient Count in *Detinue* was upon a Bailment, or a *devenerunt ad Manus.*

*Detinue de una domo vocat.* a Bee-house is not good, *Cro. Jac.* 39. *Coupledikes Case.*

*Detinue* for certain Goods, and Declares, that he had delivered them to be redelivered *quando requisitus*, and that the Defendant had not delivered them *licet sepius requisitus.* By *Jones*, This Action is a request sufficient, and its no prejudice to the Defendant, because the Defendant may come at the first day and excuse himself, and he shall not be damaged; and so it differs from Action *sur Case*, *Lach.* 209. *Herns Case.*

The Heir in a *Detinue* for a Box with Deeds, ought to count that it was sealed, for otherwise it belongs to the Executor, 36 H. 6. 27.

The Heir ought to Count of the certainty of the Land, and also how it was conveyed to him, 3 H. 6. 19.

The



The Heir ought to Count as Heir, if he Claim as Heir, 7 H. 6. 31. But if he Count upon Baylment to Re-bail to him and his Heirs, he need not set forth the Title to the Land, 19 H. 6. 41. The Heir have to Count.

*Narrat. per Executors, Plowd. 275.*

If a Man declares of a Bailment of a Charter by himself, and shew's not the Date of the Deed its Error. *Aliter* in Case of a Stranger, or if they are in a Box, he need not shew the Date, 2 Roll. Rep. 413. *Hayward and Peters.*

The Bailment was to deliver when requested, and the Plaintiff doth not in his Count shew the place of the Request, 2 Roll. Rep. 413.

Presidents of Counts in Detinue.

**D**E Catallis, & Cartis deliberat. salvo custodiend. versus Attornat. per billam, de billis deliberat. salvo custodiend. A<sup>st</sup> 165.

*De Scripto Obligat. deliberat. Def. pro Quer. salvo custodiend. Rast. Ent. 217. bis Vet. Ent. 27, 28.*

*De Baga cum Chartis, Ra. Ent. 200.*

*Versus virum & uxor. de pixide cum cartis deliberat. uxori sole salvo custodiend. Ra. Ent. 217.*

*Pro*

*Pro filio & Herede versus Executores de duabus cistis cum cartis deliberat. per prim. Testator. salvo custodiend. Ra. Ent. 120. Ash. 163.*

*Versus Executorem per hered. Lib. Intra. 210. a.*

*De Catallis, Ra. Ent. 211. Vet. Ent. 27. Ra. Ent. 150.*

*De equo, 21 Ed. 4. 55.*

*Versus Executor. de Catallis deliberat. Testatori pro Quer. salvo custodiend. Ra. Ent. 212.*

*Placita Gen. & Spec. p. 371.*

*De Catallis deliberat. salvo custodiend. pro Quer. al. J. qui ea deliberavit al S. qui ea deliberavit Def. Ash. 164.*

*Count per Executor, Plowd. 275. Foxes Case.*

*De bonis deliberat. salvo custodiend. ut Pignus pro denar' mutui, quos quer. postea solvit, Ash. 168.*

Note, If a Man bring *Detinue* for Charters, its good policy to declare of one Deed in Special, (if he can) for then the Defendant shall not Wage his Law, *Co. Lit. 286. b.*

De

De rebus Deliberat. Deliberand. al auter  
ou Redeliberand.

**D**E pixide cum cartis quam R. delibera-  
vit. Def. deliberand. quer. Ra. Ent.  
209.

*Versus Executores ubi Testator deliberavit.  
eis pixidem cum cartis deliberand. post ejus  
mortem ejus heredi propinquiori Et quer. est  
heres propinquior, Ra. Ent. 210.*

*Count per Baron & Feme pro bonis de-  
liberat. al Testator per Feme dum sola fuit.  
Placita gen. & spec. 370.*

*Pro Administrat' versus Executor. super  
bill. Indentat. pro Catallis Deliberat. in Mor-  
gagio. Placita gen. & spec. 371.*

*Ubi res devenex. ad manus Def. per Inven-  
tionem, &c. de pixide cum cartis quam quer.  
amisit & Def. invenit & detinet, Ra. Ent.  
209, 210. bis. Vet. Ent. 28, 84.*

*Simile pur Baron & Feme, Ra. Ent. 209.*

*Pro filio & herede de pixide cum cartis Profilio &  
concernen. terras quæ descend. quer. & quæ hered.  
devenex' ad manus Def. per Inventionem, Ra.  
Ent. 213.*

*Simile*

*Simile pro herede terrarum talliat. Ra. Ent. 213.*

*Pur un en remaind. in Tayle de Scripto Doni tallio, ind. post mortem prioris Tenentis in Tayle qui obiit sine exitu, deven' ad manus Def. per Inventionem, 3 Brownl. 137.*

*Versus Baron & Feme de pixide cum cartis, unde frater quer. possess. & seifit. de terris amisit pixidem, &c. & pixis devenit ad manus uxoris dum sola fuit, Ra. Ent. 209.*

*De pixide cum cartis ubi L. seifit. dedit terras in tallio al H. & E. & dedit eis pixidem cum cartis. H. & E. mor. terre descend. quer. & pixis venit ad manus Def. Ra. Ent. 210. Ash. 164.*

*De 4 pixidibus cum cartis ubi W. seifit. de manerio concessit quer. & aliis defunct. in feodo Et pixides devener. ad manus Def. Ra. Ent. 213. & plus vid. 210, 213.*

*Quer. fuit possess. de bonis quæ amisit & quæ deven. ad manus Def. per Inventionem Ash. 173.*

*Simile de equa, Co. Ent. 169.*

*Pro Executor de bonis unde Testator obiit possess. & quæ post ejus mortem deven. ad manus Def. per Inventionem, Pl. 175. Ash. 166.*

De

De rebus Emptis.

**D**E tot. quarteriis frumenti pretij, &c. ac  
tot. quarteriis brasij precij, &c. empt.  
deliberand. ante talem diem, Co. Ent. 169.

*Simile per billam*, 3 Br. 186.

*Simile per Indenturam*, Ra. Ent. 133.

*De plumbo empt. deliberand. sur request.*  
3 Br. 188. *De Ferro* 187.

*Versus virum & uxorem de bordeo empt. de  
uxore sola*, Ash. 169.

*De Catallis, videlicet pellibus ovil' empt.  
deliberand. de tempore in tempus prout Def.*  
*Occideret Oves*, 2 Br. 186.

Before I come to speak of the Barrs in  
this Action, I shall say something of Gar-  
nishment and Enterpleader.

Garnishment signifies a warning given  
to one for his appearance, and that for  
the better furnishing the Cause and the  
Court. As for Example, When a Man is  
sued in *Detinue* of certain Evidences or  
Charters; and saith, that the Evidences  
were delivered to him, not only by the  
Plaintiff, but by *J. S.* also, and therefore  
prays that *J. S.* may be warned to plead  
with

with the Plaintiff, whether the Conditions be performed or not. And in this Petition he is said to pray Garnishment; and may be interpreted a warning to *J. S.* to provide himself of a Defence, or a furnishing the Court with all Parties to the Action, whereby it may determin the Cause throughly, and until the Garnishee (*J. S.*) appear, the Defendant is as it were out of Court. *New Terms del Levy.*

Garnishment is granted for saving the Condition.

The Defendant in *Detinue* pleads, That the Plaintiff and *B.* delivered this upon Condition, and prays Garnishment, and had it without shewing what the Conditions were 3 *H. 4.* 18.

Garnishment prayed of the Heir and Executor of *B.* and good; because it did not appear, whether the Deeds in the Box were Real, or Chattles, 14 *Ed. 4.* 1. Pl. 3. 21 *Ed. 3.* 41.

Garnishment was granted against an Executor, because it was supposed, that the Testator was one that delivered the Deeds, 14 *H. 6.* 11. Pl. 42.

The Defendant shall have Garnishment, altho' the Garnishee was a Stranger to the delivery, 14 *Ed. 4.* 2.

If the Garnishee be returned dead, then his Heir or Executor shall Garnish.

Executor shall have Garnishment upon delivery to his Testator, *Lib. Int.* 216. *D. Sect. 1.*

The



The Garnishor may grant a *Scire fac.* if to Issue out against the Garnishee, and he make default, Judgment shall be given against him, *Lib. Int.* 217.

Of Enterpleader, in what Cases granted  
or not.

Enterpleader is the discussing or trying of a point incidently falling out, before the principal Cause can be determined. As for Example, In *Detinue* the Defendant pleads another Writ hanging by another, and prays Enterpleader, and it was granted for the mischief that might ensue: For otherwise, both might recover the Deeds, and so be twice charged. So, if two several persons being found Heirs to the same Land by two several Offices in one County, the King is brought in doubt to whom Livery ought to be made. And therefore, before Livery made to either they must Enterplead, *i. e.* formally try between themselves, who was the right Heir, 3 H. 6. 43. 45. 9 H. 6. 36. *Stamf. Perog. c.* 19. *Finch Ley* 129. *Broke tit. Enterpleader.*

Note, There shall be no Enterpleader unless the Defendant pray it.

If the Parties appear by Attorneys, day shall be given over, because they shall not Enterplead but in person, 9 Ed. 3.

## Of Actions in Detinue.

Upon several Bailments there shall be no Enterpleader, 19 H. 6. 2.

If the Defendant and the Garnishee do not agree in Plea, there shall be no Enterpleader, 14 H. 6. 11.

There shall be no Enterpleader unless the Defendant alledge, that both demanded one thing, 8 Ed. 4. 6.

If the Defendant after Garnishment make default; yet there shall be an Enterpleader, 2 R. 2. Enterpleader, vide 13 Lib. Int. 213. a. & b.

## Presidents in Interpleader.

**N** Arr. per A. & Simile per B. de 2 Scriptis Obligatoriiis deliberat. Testatori salvo custodiend. Def. ad ambas Narrationes in uno placito dicit, qd. Scripta fuer<sup>t</sup> deliberat. Testatori per ambos querentes equa manu sub certis Conditionibus & petit qd. ambo querentes interplacent. quod conceditur Et qui ult. narravit. respond. prius qui petit. lilo, Ra. Ent. 213.

2 Similes Narrationes de 4 pixidibus cum cartis. Def. dicit qd. Baga sigillat. cum 4 pixidibus quæ palpar. possunt deven. ad manus Def. post mortem uxoris suæ, & Billa superinde affixa faciens mentionem de cartis in eadem Et profert Bagam in Curia & petit. qd. ambo querentes inde interplacent. Ra. Ent. 214.

Def.

Def. post Narrationem dicit qd. un B. tulit aliud breve versus ipsum de eisdem cartis & petit qd. B. narret versus eum, qui narrat. Def. proferens cartas in Curia pet' qd. ambo quer' interplacitent Et superinde unus quer' petit Liberationem, & aliter placitat in Bar. Et exitus uter eorum sit consanguineus & hæres, Ra.Ent. 213.

Def. dicit qd. Scriptum fuit deliberat. ei per quer' & un A. sub. certis Conditionibus, quas nescit an sint implet. Et petit qd. quer' & A. inde interplacitent. Repl. qd' quer' deliberavit Script. Defendenti prout in Narrat' & traverse qd. Scriptum fuit delib' per quer' & A. sub certis Conditionibus, Ra.Ent. 216.  
1 Brown. 121. Simile Ashton 171.

De 2 Scriptis deliberat. sub Conditione de performance arbitrij qd' non fuit fact. unum Scriptum deliberat. querenti, & alterum al Garnishee, Ra. Ent. 214.

Def. dicit qd' p'xis fuit ei deliberat. per quer' & alium defunct. sub certis Conditionibus & petit Scire fac. Exec. ad interplacitand. Ra. Ent. 217.

Simile ubi pars fac' default. sur Scire fac. Return' & iudicium superinde, Ra. Ent. 217. b.

*Vic' Ret' Scire fec' al un qui fac' defalt'  
Idco judicium versus eum. Alter nichil habet.  
Testat' Scire fac. agard versus eum. Scire fec.  
inde retorn' & judicium per defalt. Ra. Ent.  
218.*

*Pleadings in Detinue.*  $\left\{ \begin{array}{l} \text{per Patriam.} \\ \text{non detinet.} \\ \text{per Legem.} \end{array} \right.$

*As to the Charters and Writings.*

*Prays Garnishment, and Traverse the delivery sub certis conditionibus.* *Detinue* for a Bond of 200 l. The Defendant pleads, That the Obligor and Obligee delivered it to him, *sub certis conditionibus custodiend.* and he knows not whether they be performed and prays Garnishment. The Plaintiff traverseth, that it was not delivered *sub certis conditionibus*. It was moved in Arrest of Judgment, that the Trial is ill, for the Issue *sub certis conditionibus* is uncertain, and because there was not Garnishment before Trial of the Issue. But it is helped by Statute of *Jeofayles*, *Cro. Eliz. p. 857. Purland and Whitier.*

In *Detinue* of an Obligation. The Defendant after *Impar lance* pleads, That the Condition was to perform to the Plaintiff and *J. S.* and prayed Garnishment of *J. S.* to which the Plaintiff demurred, being but in Abatement and to save Costs; which cannot be done but by appearance the first day: As tender with *uncore prist, &c. Sed non allocat.* for non *constat*,

*Stat.*, but he did appear the third day, and a *Respondens ouster* was refused. But Process against the Garnishee, 3 *Keb.* 738.

In *Detinue* for Deeds, as Heir, Bastardy is a good plea, 35 *H.6.* 9. *Pl.* 12. Bastardy.

Warranty and Assets is no Bar against the Issue in Taile in *Detinue*, 9 *H. 6.* 15. and Assets. *Pl.* 5. 4 *H.* 7. 10. Warranty

*As to other Goods and Chattles.*

Count, That he delivered the Goods to the Defendant to be safe kept. The Defendant confesseth the Bailment, and pleads in Bar, that after the Bailment, one J. S. feloniously stole them away out of his Possession. *Per Cur.* Judgment *pro Quer'* for that the Plaintiff had delivered the Goods to be safe kept, and the Defendant had taken it upon him by his acceptance upon such delivery, and for this he ought to keep them at his peril, *Co. 4. Rep.* 83. *Southcotts Case, Cro. El.* 857. *Mesme Case.* Bailment.  
Feloniously Stealing.

If a Man hath Goods bailed to him to deliver over to another, and after a Writ of *Detinue* is brought against him, by him which had right to have the Goods; now if the Defendant pendant the Action deliver the Goods over to him, to whom they were to be delivered; this is a good Bar, for that he had delivered them according to his Bailment, *N. B.* 139. Delivery over to him that had right.

It is a good Plea by the Executor upon Bailment to the Testator, that he had delivered them to him that had right, 9 H. 6. 58. a.

A. lent Sheep to a Woman Sole, who took an Husband, which commanded the owner to take them again; who refused, this is a good Bar, 43 Ed. 3. 21.

Traverse  
le Bail-  
ment. It is the Opinion of some. Where in *Detinue* the Plaintiff declares of a Bailment, The Defendant may plead, that he found them, and Traverse the Bailment, 1 Leon. 189. 39 H. 6. 37.

Attachment  
pleaded. *Detinue* for a Coach. The Defendant pleads Attachment according to the Custom of London pendant the Writ. *Per Cur.* Its not a good plea, Noy p. 52. *Countess of Rutlands Case.* *Quære*, and *vide Latch* p. 208. *Hern and Stubbers Case.*

Concord. In *Detinue* concerning personal things, or concerning Charters of Freehold: Concord with satisfaction is a good Plea, 9 Rept. 78. 79. *Peyro's Case.*

Estray. In *Detinue* of an Horse, its a good plea, that he did Estray, and that he proclaimed him, and offered the Horse to the owner, if he would pay for his Meat, No. Lib. Int. 169. C. Sect. 2.

Payment  
to the va-  
lue by Ex-  
ecutor. The Executor pays a Debt to the value of the Goods, and dies, this is a good Bar in *Detinue*, brought by the surviving Executor, 3 Eliz. Dyer 187. Pl. 6.



Its no Plea for a Carrier or a Ferryman, that he was robbed, 4 Rept.84. *South-cots Case*, 2 H. 7. 11. b. That he was robbed.

Goods are delivered to be safe kept Its no Plea that they were Stollen, *vid. Prys Case*. *Aliter*, if they are accepted to keep as safe as my own, 4 Rept.83. *South-cots Case*. Or Stollen.

The Defendant pleads, That he did distrain for Rent reserved upon a Lease. Its a good Bar, 27 H. 8. 22. Pl. 15. Distress for Rent.

Bar, That the Plaintiff pledged them for Money which is not paid; This is a good Bar, 34 H. 6. 42. Pledge. Dying before the delivery.

*Detinue* for an Horse. Its a good Plea to say, That the Horse was Sick of divers Diseases at the time of the delivery, and that he died thereof before any request made for redelivery, 21 Ed. 4. 5.

Its a good Plea, That the Party that did deliver the Goods did afterwards give them to the Defendant, 21 Ed. 4. 55. 12 Ed. 4. 8.

Its a good Plea for a Taylor, That he keeps the Garment for his Money. So for an Hostler, That he keeps the Horse for his Meat, 5 Ed. 4. 2. Detainer for Money.

If Goods are Pawned to a Man for a certain Sum of Money; He may in *Detinue* plead they were stollen, for he doth not take upon him but to keep them but as his own Goods, for he had a Property in them, and not the keeping only. But if the Money were tendred before That the Pawn was Stollen.

the Stealing, *Aliter*, *Southcots Case*, 4 Rep. 83.

One Bails a Coffe to me lockt. In *Detinue* for Goods taken out of it, I may plead the owner had the Key of it, *Southcots Case*.

Delivery  
before the  
Writ  
brought.

*Detinue* is brought for Goods found. The Defendant may plead, That he delivered them before the Writ brought, 27 H. 8. 21.

That the Horse died is a good Bar, if he perish not in default of the Baylee, *Doct. and Stud.* 129.

By Reco-  
very.

Recovery in Trespass is a good Bar in *Detinue*, 20 H. 7. 58. b.

That the Garnishee brought *Detinue* against the Defendant, and prays Garnishment against the Plaintiff who makes default, and he had Judgment, 34 H. 6. 47. 21 H. 6. 35.

Release.

If I have any Cause to have a Writ of *Detinue* for Goods against another, albeit I release to him all Actions personal; yet I may by the Law take any Goods out of his Possession, *Co. Lit. Sect.* 498.

Release by the Plaintiff is a good Bar, *Lib. Int.* 290.

A Release of all Actions personal in a Writ of *Detinue* of Charters is a good Bar, *Co. Lit.* 286. b.

And so any other thing shewing that the Action will not lye, may be pleaded in Bar of the Action.

*Non detinet per Patriam*, may be pleaded to Issue.

*Non detinet per Legem*, and so the Defendant may Wage his Law, *Lib.Int.* 211, 212.

Altho' the Bailment be by Deed, yet the *detinet* is the substance, 27 H. 8. 22. Pl. 14.

An Executor may Wage his Law, 11 H. 6. 40. 3 H. 6. 28.

If a Man brings his Action of *Detinue* for Evidences in a Bag sealed, and declare for one Evidence in Special; the Defendant in this Case shall not Wage his Law.

An Infant under 21 years shall not wage his Law: And if an Infant be Plaintiff, *Ley. gagre.* The Defendant shall not Wage his Law.

Bars de Cartis.

**Q**D. *quer. predidit Scriptum & J. illud invenit, cui quer. Release, qui perinde fuit possess. de Scripto ut de Scripto proprio & dedit illud Def.* Ra. Ent. 209.

*Qd' Scriptum fuit deliberat. sub Conditione performationis arbitrij, quod non fuit fact.* Ra. Ent. 215. Ash. 172.

*Simile sur auter' Condition & Traverse delivery sur Condition,* Ra. Ent. 214.

- Qd' pixides fuer. deliberat. Defendenti per un Garnish. & quer. equa manu, sub Condict' qd. si ipse solveret querenti tali die 100 l. tunc pixides ei deliberat' forent, aliter Defendenti & qd' ipse obtulit. solvere quer' denarios, quos recusavit accipere. Repl. qd' non obtulit, Ra. Ent. 215.

Qd' terre descend' Def. ut consanguineo. Repl. qd' terre descend. querenti ut consanguineo, & Traverse qd' W. habuit fratrem vocat. S. Ra. Ent. 213.

Detinue per un en remaind' in Tayle sur Trover de dono Tallij. Bar qd' prior Tenant in Tayle fait Feofment al J. & suffer recovery al use in Fee; & puis fait Feofment al use de luy mesme pur vie, Remaind. al Def. en Tayle & liberavit ei Scriptum pro manutenentia Tituli. Repl. Tenementa non continentur in recuperatione, 3 Brownl 178.

Detinue de scripto deliberat. salvo custodiend. Bar qd' quer. impignoravit Scriptum def. pro denariis mutuatur. & Traverse qd. quer' deliberavit Salvo Custodiend. Plow. 275. Ash. 167.

## Barr de Bonis &amp; Catallis.

**N**on Detinet per patriam, Ra. Ent. 212.  
Ash. 165.

*Non Detinet per Legem ad diem*, Ra. Ent.  
211. Ash. 165.

*Def. relicto placito de non detinet per Legem,  
ex assensu quer. placitat non detinet per patriam,*  
3 Br. 186.

*Qd. equus tempore deliberationis fuit infirmus  
& variis infirmitatibus detent. & postea  
interiit. Repl. qd. equus fuit sanus & traverse  
qd. fuit infirmus,* 21 Ed. 455.

*Qd. quer. impignoravit Catalla al. f. pro  
denariis mutuat. f. obiit intestat. & Admini-  
stratio fuit commissa Def. qui cepit Catalla  
& detinet pro denariis insoluit. Et traverse  
qd. quer. deliberavit præd. f. Catalla salvo  
custodiend. & Redeliberand. super requisitione,*  
Ra. Ent. 212.

*Bar qd. Def. ut ballivus Episcopi cepit equam  
ut extrahur. & quer. clamavit eam 9 Octob.  
sed recusavit solvere pro pastura. Repl. qd. 10  
Junij Def. clamabat equam & obtulit Def. 3 s.  
4 d. pro Pastura. Rej. maintenance de Bar &  
Traverse qd. Quer. obtulit 3 s. 4 d. pro pa-  
stura, Co. Ent. 169. 3 Br. 183.*

*Qd.*

*Q.S. seifitus de manerio habuit bona waviata ibid. & Def. ut ballivus manerij cepit bona waviat. per hominem ignotum. Repl. quod un W. furavit bona de quer. qui in recenti persecutione cepit eum & qui super indictat. fuit & invent cul. & breve agard ballivo manerij ad restituend. bona. Et traverse qd. fuer. waviata per hominem ignotum, Ash. 173.*

*Non Detinet per Legem al part, al residue qd. Def. Levavit querelam versus quer. in Curia Vic. London, & Catalla tunc in Custodia Def. superinde Attach. & post 4 default. condemnat. Def. Repl. null tiel record, Ra. Ent. 212.*

*Detinue per Execut. Bar qd. ante probationem Testamenti Administratio fuit commissa al T. qui vendidit bona. Def. Demur. inde, Plowd. 270. Ash. 167.*

*Placitum in Det & Detinue, pro parte cogn. Actionem, pro residue non debet nec detinet per Legem instant. vadiat. placita generalia & specialia 272.*

If the Plaintiff Count that he himself delivered Charters to the Defendant to be redelivered to him, and the Defendant plead *Non detinet modo & forma*, and the Jury found that another delivered the Writings to the Defendant to redeliver to the Plaintiff, This is found against the Plaintiff, for it is contrary to his Count, 33 H. 6. 30. b.

In



In *Detinue*, If the Jury find Damages and Costs, and no value as they ought, this shall not be supplied by a Writ of Enquiry of Damages, 10 Rept. 119. *Cheneys Case*.

*Evidence. Tryal. Verdict.*

In *Detinue* the Defendant pleads *Non Detinet*: He cannot give in Evidence, that the Goods were pawned to him for Money, and that it is not paid, but must plead it: But he may give in Evidence, a gift from the Plaintiff, for that proves he detaineth not the Plaintiffs Goods, *Co. Lit.* 283. a. For it is a Rule there, generally when the Defendant hath cause of justification or excuse, he cannot plead the general Issue, *Dyer* 276, 212.

Bargain and Sale of Goods by Indenture to be void on payment of such a Sum of Money such a day. The Jury gave a Special Verdict, and because they did not find the parcels in the Declaration, to be the same with the Indenture, but only that he sold diverse parcels, which tho' they be all one in name; may notwithstanding be several, and intendment will not help it; the Judgment was reversed, *Cro. El. Bateman and Elman*.

In *Detinue* of Charters, There was a Verdict for the Plaintiff and Damages; but the value of the Charters was omitted

ted (which is part of the Judgment, and to be recovered in case the Charters cannot be had.) It was doubted by the Court, whether this may be supplied by a Writ of Enquiry of Damages. It seems that it may be supplied, because it is only in point of Damages, upon which no Attaint lies, *Siderfin* p. 246. *Burton and Robinson*.

In *Detinue* the Jury ought to find the value of every particular thing demanded, 7 H. 6. 43.

In *Detinue* of an Obligation of 100 l. upon Bailment by J. S. The Defendant pleaded he did not receive an Obligation of any such Sum, and it is found that he received an Obligation of a greater Sum; this shall be found for the Defendant, for this cannot be the same Obligation which the Plaintiff demands, 21 Ed. 3. 30.

### Judgment.

In *Detinue* a Man recovers the thing detained. If not that, the value, 7 H. 6. 41.

In *Detinue* of a Statute Merchant, The Defendant prays Garnishment. The Plaintiff recovers against the Garnishee by Erroneous Judgment, by force of which the Defendant delivers the Statute to the Plaintiff, who had Execution, and after the Garnishee reverseth the Judgment in a Writ of Error, by which he is restored to all that he had lost, by this the Execution shall not be avoided. But it seems he shall be aided by *Audita Querela*, 5 Rep. 90. *Hoes Case*. The

The Judgment was, *qd. præd. W. recuperet versus prefat. J. Octo quarteria frumenti vel valorem eorundem*, No. Li. Int. 169. C. Lib. Int. 218. b. And upon the Return of the Writ, if it appears that *W.* did not deliver the Corn, then the Judgment shall be for the value with Damages and Costs.

Bracton Lib. 3. fo. 102 b. *Non tenetur precise ad rem restituend. sed sub disjunct. vel ad rem vel ad pretium.*

The Judgment was, That he should recover the Deeds if they are found, and also Damages, and if not found, then all in Damages, 7 H. 6. 31. 22 H. 6. 41.

*Ideo consideratum est qd' præd. A. recuperet versus prefat. B. pixidem prædictam cum cartis, &c.* Lib. Int. 218. A. Sect. 1.

The Judgment was, That he should recover the Deeds against the Defendant, and *haberet Liberationem versus Garnishee*, 21 H. 6. 36. a. Lib. Int. 219. D. But if Judgment be given upon default of the Garnishee before appearance no Damages shall be given, 20 H. 6. 4.

If the Plaintiff and Defendant make default, the Garnishee shall have Judgment, and the Plaintiff and Defendant in *Misericordia*, 40 Ed. 3. 39.

*Detinue of a Bond.* Upon *Non Detinet* pleaded, *verdict pro Quer.* Damages to 7 l. and Costs 6 d. and if the Bond cannot be restored, they assessed 20 l. more for Damages besides the 7 l. The Judgment was, That he should recover the said 7 l. and 6 d. *pro Costs*, and the said Bond or  
20 l.

20 l. the Judgment is Erroneous : For it ought to be Conditional (*viz.*) the Bond, and if he cannot have the said Bond then the 20 l. and a *Distringas* to the Sheriff to demand the Bond, and if it cannot be delivered then the 20 l. *Cro. Jac. p. 681. Peters and Hayward, 2 Rolls Rep. 413. Mesme Case.*

When a Man recovers in *Detinue*, then there goes forth a *Distringas* against the Defendant to deliver the thing recovered. *Vide le forme del Distringas in Compl. Soll. sub. titulo Detinue.*

The Plaintiff counted to his Damage of 100 l. the Jury gave 150 l. and Judgment entred, This was reversed, 1 *Bulst. p. 49. Hobins and Kimble.*

In *Detinue* of Charters, if the Issue be upon the *Detinue*, and its found that the Defendant hath burnt the Charters, The Judgment shall not be to recover the Charters, for it appears he cannot have them, but he shall recover the value of the Land in Damages, 17 *Ed. 3. 45. b.*

Judicia de Scriptis.

**A**D quem diem coram Domino Rege apud <sup>Judicium</sup> <sup>pro quer.</sup> <sup>in placito</sup> <sup>detentionis</sup> <sup>Scripti.</sup>  
*Westm. vener. partes predicta in propriis personis suis. Et visis & diligent. inspect. per Cur. Dom. Regis hic Premiss Considerat. est qd. præd. quer. recuperet versus præfat. Def. Scriptum præd. nec non damna sua predicta ad 100 l. tam occasione detentionis ejusdem Scripti licet idem quer' liberation' ejusdem Scripti habere possit quam 4 l. pro mis. & Custag. præd. per Cur. præd. in forma præd. assess. Et ulterius qd. præd. quer. si ipse liberationem Scripti præd. habere non possit recuperet versus præfat. Def. valorem ejusdem Scripti ad 100 l. præd. in forma præd. scilicet assess. Et præd. Def. in misericordia Tompl. 451.*

*Detinue per hered. versus Executor. Def. dicit. qd. invenit cistas cum cartis inter bona Testatoris & profert illas in Curia. Jud. qd. quer. habeat liberationem, Ra. Ent. 210.*

*Def. dicit qd. semper fuit paratus ad deliberand. & deliberat eas in Curia, Ra. Entries 210. bis.*

*Def. cognovit actionem de cista cum cartis quæ est adeo ponderosa qd. non potest proferri in Curia. Quer. remittit damna. Jud. de liberatione habend. & null Distringas awarded. Ra. Ent. 218. bis. Simile Thesaurus Brevium 90. Jud.*

## Of Actions in Detinue.

*Jud. pro Quer. sur demurr. de 2 Script. Jud. 46. Verdictum & judicium pro quer. de pixide cum cartis Ra. Ent. 219.*

*Jud. super veredicto versus un Garnishee ratione interplacitationis, Ra. Ent. 219. ter.*

*Simile pur un Garnishee versus quer. Ra. Ent. 219.*

*Verdict pro quer. de Script. detent. & damna assessa ad 40 l. si Scriptum deliberatur, & si non ad 60 l. Cur. advisare ult. Ra. Ent. 211.*

*Scire fac. versus Execut. de deliberatione habend. Scriptorum recuperat. versus Testatorem Executor comparet sur Scire fac. & profert Scripta in Curia, & inde Exoneratur, Ra. Entr. 215.*

## Judicia de Catallis.

**I** Deo Considerat. est qd. præd. quer. recuperet versus præfat. Def. 12 l. pro valore præd. 7. pec. panni Lanei ac damna sua prædicta per Fur. præd. in forma præd. assess. nec non 5 l. pro Misis & Custag. suis præd. eid. quer. per Cur dict. Dom. Regis hic ex assensu suo de incremento adjudicat. Et præd. Def. in misericordia, &c. Tomp. 455.



*Non informat. Inquir. de damnis agard & retorn. Jud. superinde, Co. Ent. 169.*

*Jud. pro quer. sur Demurrer al Barr. Inquir. agard & Jud. superinde, Plo. 283. Ash. 168. Jud. 45.*

*Verdict. & Jud. pro quer. Ra. Ent. 218. bis. 219, 220. Co. Ent. 170. Ash. 170.*

*Pro quer. de бага cum denar. super verdict. Ra. Entr. 209.*

*Detinue de bursa cum 9l. Verdict. pro quer. Bursa cum 7 l. & damna assessa ad 8l. si deliberentur, & si non, &c. ad 10l. & Jud. inde, Ra. Ent. 211.*

*Verdict. pro quer. sed nulla Inquisitio de valore, ideo verdict. insufficiens & Venire fac. De novo agard. Ra. Ent. 215.*

*Def. defecit de Lege post Esson. inquir. de damnis agard. & jud. superinde, Ra. Ent. 112. 128. bis.*

## Execution.

Against the { Defendant  
and  
Garnishee.

Execution against the Defendant by Distress for the thing, *Lib. Int.* 169. *No. Lib. Int.* 170.

But if the thing be not delivered to the Plaintiff, then he shall have Execution for the Damages by *Capias*, *Lib. Intrat.* 216. *b.*

The Plaintiff and Defendant made default. Garnishee had Judgment and Distress against the Defendant, 40 *Ed.* 3. 39.

But *Capias* lies not, if the Deeds concern Lands, 8 *H.* 6. 29. 14 *H.* 6. 1. But for the Damages if they will not deliver *Capias* lies, 22 *H.* 6. 41.

If Deeds are in a Box then a *Ca. sa.* lies in Execution, 7 *H.* 4. 2. 14 *H.* 6. 1. *Lib. Int.* 216.

If Damages shall be recovered against a Garnishee, the Execution shall be of the Goods and Lands of the Garnishee, 7 *H.* 6. 45. 9 *H.* 6. 38. 19 *H.* 6. 64. But not of his Body because he was not party to the Writ, 7 *H.* 6. 45. 9 *H.* 6. 38. But *Lib. Intr.* 216. *b.* *Ca. sa.* was awarded against a Garnishee for Damages recovered against him.

*Ca. fa. en Detinue, & Distringas pur le chose detain ou le value de ceo, Thesaurus Brevium. 48. 50. Raft. 212.*

*Distringas en Detinue ad reddendum bordum, & ad inquirendum de valore inde. Bil. ad deliberand. Cistam cum Chartis, post Cognitionem Acc'onis, Thesaurus Brevium. 89, 90.*

THE HISTORY OF THE

REIGN OF KING CHARLES THE FIRST

IN THE YEAR 1649

BY

J. H. BURTON

ESQ.

LONDON

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F I N I S.

Ex. G. A. A.

